48/Chap. 3-6/988

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Federal Acquisition Regulations System

48

CHAPTERS 3 TO 6
Revised as of October 1, 1988

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Federal Acquisition Regulations System

48

CHAPTERS 3 TO 6

Revised as of October 1, 1988

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OF GENERAL APPLICABILITY
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AS OF OCTOBER 1, 1988

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To cite the regulations in this volume use title, part and section number. Thus, 48 CFR 301.1 *refers to Title 48, Part 301, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

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REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

JOHN E. BYRNE,
Director,
Office of the Federal Register.

October 1, 1988.

THIS TITLE

Title 48—FEDERAL ACQUISITION REGULATIONS SYSTEM is composed of seven volumes. The chapters in these volumes contain all current regulations and are arranged as follows: Chapter 1 (Parts 1 to 51), Chapter 1 (Parts 52 to 99), Chapter 2 (Parts 201 to 251), Chapter 2 (Parts 252 to 299), Chapters 3 to 6, Chapters 7 to 14 and Chapter 15 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1988.

The Federal acquisition regulations in Chapter 1 are those government-wide acquisition regulations jointly issued by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. Chapters 2 through 59 are acquisition regulations issued by individual government agencies. Parts 1 to 69 in each of Chapters 2 through 59 are reserved for agency regulations *implementing* the Federal acquisition regulations in Chapter 1 and are numerically keyed to them. Parts 70 to 99 in Chapters 2 through 59 contain agency regulations *supplementing* the Federal acquisition regulations.

The two volumes containing Chapter 1 include a subject index to the Federal acquisition regulations. The second volume, containing Chapter 1 (Parts 52 to 99), includes contract clauses, and forms. The volume containing Chapter 2 also contains a subject index to the Department of Defense regulations. The volume containing Chapters 7 to 14 includes a Distribution Table for Chapter 9.

For this volume Laurice A. Clark was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Ruth C. Pontius.

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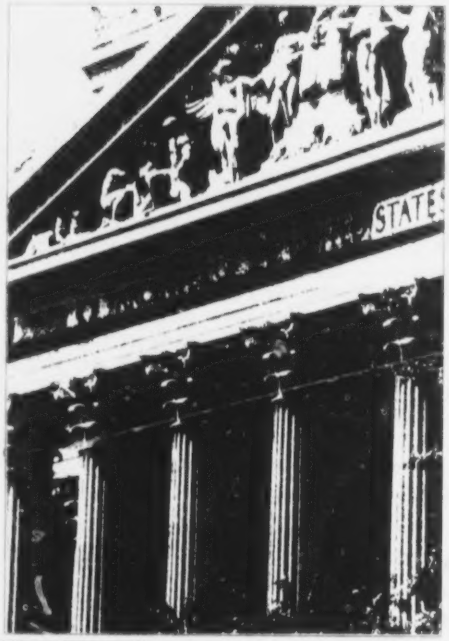

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EDITORIAL NOTE: Nomenclature changes affecting Chapter 3 appear at 49 FR 36110, Sept. 14, 1984.

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SUBCHAPTER A—GENERAL

PART 301—HHS ACQUISITION REGULATION SYSTEM

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13961, Apr. 9, 1984, unless otherwise noted.

Subpart 301.1—Purpose, Authority, Issuance

301.101 Purpose.

(a) The Department of Health and Human Services Acquisition Regulation (HHSAR) is issued to establish uniform acquisition policies and procedures for the Department of Health and Human Services (HHS) which conform to the Federal Acquisition Regulation (FAR) System.

(b) The HHSAR implements and supplements the FAR. (Implementing material expands upon or indicates the manner of compliance with related FAR material. Supplementing material is new material which has no counterpart in the FAR.)

(c) The HHSAR contains all formal departmental policies and procedures that govern the acquisition process or otherwise control contracting relationships between the Department's contracting offices and contractors.

301.102 Authority.

The HHSAR is prescribed by the Assistant Secretary for Management and Budget under the authority of 5 U.S.C. 301 and Section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary. The Assistant Secretary for Management and Budget has redelegated the authority to establish all departmental acquisition policy and publish all acquisition regulations to the Deputy Assistant Secretary for Procurement, Assistance and Logistics. This authority is not redelegable.

301.103 Applicability.

The FAR and HHSAR apply to all HHS acquisitions as stated in FAR 1.103. Unless specified otherwise, these regulations apply to acquisitions within and outside the United States.

301.104 Issuance.

301.104-1 Publication and code arrangement.

(a) The HHSAR is also published in the same forms as indicated in FAR 1.104-1(a).

(b) The HHSAR is issued in the Code of Federal Regulations (CFR) as Chapter 3 of Title 48, Department of Health and Human Services Acquisition Regulation. It may be referenced as "48 CFR Chapter 3."

301.104-2 Arrangement of regulations.

(a) *General.* The HHSAR conforms to the FAR with respect to divisional arrangements; i.e., subchapters, parts, subparts, sections, subsections, and paragraphs.

(b) *Numbering.* The FAR System of numbering permits the keying of the same or similar subject matter throughout Chapters 1 (FAR) and 3 (HHSAR). However, unlike the FAR numbering scheme, our scheme varies somewhat in the numbering to the left of the decimal point. Whereas the FAR only identifies the part number to the left of the decimal point, our corresponding reference identifies the chapter as well. For example, this corresponding paragraph in the FAR is numbered 1.104-2(b) where "1" is the part number (may be one or two digits and is followed by a decimal point), "1" (to the right of the decimal point) is the subpart number, "04" (always two digits) is the section number, "2" is the subsection number (always hyphenated), and "(b)" is the paragraph reference. The corresponding HHSAR reference is 301.104-2(b) where the "3" or first digit is the chapter number assigned to the particular department or agency (may be two digits) and the "01" represents the part number (part numbers will always be two digits for agencies implementing the FAR). The remaining numbers are identical to and represent the same divisions as the FAR example.

(c) *References and citations.* (1) Unless otherwise stated, references, indicate parts, subparts, sections, subsections, etc, of this regulation, the HHSAR.

(2) This regulation shall be referred to as the Department of Health and Human Services Acquisition Regulation (HHSAR). Any reference may be cited as "HHSAR" followed by the appropriate number. Within the HHSAR, the number alone will be used.

(3) Citations of authority shall be incorporated where necessary. All FAR reference numbers shall be preceded by "FAR".

301.104-3 Copies.

Copies of the HHSAR in FEDERAL REGISTER and CFR form may be purchased by the public from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Lose-leaf copies of the HHSAR may be obtained by departmental personnel having a need for the document by placing an order with a Directives Distribution Coordinator in accordance with General Administration Manual Chapter 1-00, HHS Staff Manual System.

301.105 OMB approval under the Paperwork Reduction Act.

The following OMB control numbers apply to the information collection and recordkeeping requirements contained in this regulation:

HHSAR segment	OMB control no.
315.4	0990-0139
324.70	0990-0136
332.406	0990-0134
342.7103	0990-0131
352.215-71	0990-0139
352.216-70	0990-0138
352.224-70	0990-0136
352.228-70	0990-0135
352.232-71	0990-0134
352.232-73	0990-0134
352.233-70	0990-0133
352.270-1	0990-0129
352.270-2	0990-0129
352.270-3	0990-0129
352.270-5	0990-0130
370.1	0990-0129
370.2	0990-0129

The OMB control number "OMB No. 0990-0115" is to be included in the upper right corner of the first page of all solicitations, purchase orders, and contracts issued by departmental contracting activities. The number represents approval of the HHS acquisition process and covers recordkeeping and reporting requirements which are unique to individual acquisitions (e.g., requirements contained in specifications, statements of work, etc.).

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 51 FR 44293, Dec. 9, 1986; 53 FR 15562, May 2, 1988]

Subpart 301.2—Administration

301.201 Maintenance of the HHSAR.

(a) The HHSAR is prepared and issued under the authority of the Deputy Assistant Secretary for Procurement, Assistance and Logistics. Acquisition policies and procedures which are necessary to implement, supplement, or deviate from the FAR will be issued in the HHSAR by the Deputy Assistant Secretary for Procurement, Assistance and Logistics when necessary to accomplish Department-wide acquisition objectives.

(b) The HHSAR is maintained by the Office of Procurement and Logistic Policy, Office of Procurement, Assistance and Logistics. The Director, Office of Procurement and Logistics Policy is responsible for developing and preparing for issuance all acquisition regulatory material to be included in the HHSAR.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.270 Executive Committee for Acquisition.

(a) The Deputy Assistant Secretary for Procurement, Assistance and Logistics has established the Executive Committee for Acquisition (ECA) to assist and facilitate the planning and development of departmental acquisition policies and procedures and to assist in responding to other agencies and organizations concerning policies and procedures impacting the Federal acquisition process.

(b) The ECA consists of members and alternates from the Office of Procurement, Assistance and Logistics, Office of Management Services--OS, Office of Human Development Services, Health Care Financing Administration, Social Security Administration, Public Health Service, and, collectively, the regional offices. The ECA is chaired by the Director, Office of Procurement and Logistics Policy. All meetings will be held at the call of the Chairman, and all activities will be carried out under the direction of the Chairman.

(c) The ECA, to facilitate the planning, development, and coordination of government-wide and department-wide acquisition policies and procedures, is to:

(1) Advise and assist the Chairman concerning major acquisition policy matters;

(2) Review and appraise, at appropriate intervals, the overall effectiveness of existing policies and procedures; and

(3) Review and appraise the impact of new major acquisition policies, procedures, regulations, and developments on current acquisition policies and procedures.

(d) The Chairman will periodically issue a list of current members and alternates specifying the name, title, organization, address, and telephone number of each. The member organizations are responsible for apprising the Chairman whenever a new member or alternate is to be appointed to the ECA.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.271 Timing of HHSAR revisions.

HHSAR revisions will be issued throughout the year as the need arises. HHSAR material shall become effective on the date cited in the FEDERAL REGISTER issuance or on the date of the transmittal notice which distributes it to HHSAR Staff Manual holders, unless otherwise indicated.

Subpart 301.3—Agency Acquisition Regulations

301.301 Policy.

(a)(1) The FAR and HHSAR are intended to provide all necessary regulatory guidance for the conduct of the acquisition process within the Department. However, there may be some rare instances where regulations are necessary to implement and/or supplement the FAR and/or HHSAR at the Operating Division (OPDIV) level or lower. The Department discourages the proliferation of OPDIV and lower level issuances, but will allow lower level issuances when deemed pertinent.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.302 Limitations.

The same limitations applicable to the FAR also apply to the HHSAR.

301.303 Publication and codification.

(a) The HHSAR shall be codified in Chapter 3 of Title 48, Code of Federal Regulations. Any OPDIV or lower implementation or supplementation of the HHSAR or FAR shall also be codified as part of Chapter 3. Implementing material is that which expands upon or indicates the manner of compliance with related higher level material. Supplementing material is that for which there is no counterpart. Where material in the FAR requires no implementation, there will be no corresponding number in the HHSAR. Thus, there are gaps in the HHSAR sequence of numbers where the FAR, as written, is deemed adequate. Supplementary material shall be numbered as specified in FAR 1.303.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.304 Agency control and compliance procedures.

(a) Whenever an OPDIV or lower level organization determines a need for an acquisition regulation not covered by the FAR or HHSAR or wishes to implement or supplement the coverage in either, the organization shall prepare a memorandum that explains the need, background, justification, and significant aspects of the proposed regulation and send it, together with an outline, to the Director, Office of Procurement and Logistics Policy. The Director will analyze the request to determine if it has applicability to the HHSAR or FAR; if not, the Director will either approve or disapprove the request for incorporation into the organization's acquisition regulation. If the request is approved, the organization must prepare the proposed regulation in Federal Register format, obtain all necessary concurrences, including Office of General Counsel—Business and Administrative Law Division, and send it to the Director, Office of Procurement and Logistics Policy for review and approval. The regulation must be prepared for signature by the Deputy Assistant Secretary for Procurement, Assistance and Logistics. All regulations will be required to be processed through the public rulemaking process in the Federal Register.

(b) Only the organizations listed in paragraph (d) are authorized to established acquisition regulations. As of the date of issuance of the HHSAR, no acquisition regulations below the HHSAR level exist, and the procedures detailed in paragraph (a) must be followed to initiate the establishment of an OPDIV or lower level regulation.

(c) Under no circumstances shall any organization's implementation or supplementation of the FAR or HHSAR conflict with, supersede, or repeat, paraphrase, or otherwise restate policies or procedures prescribed by these regulatory issuances. OPDIV or lower level material shall follow the numbering system, format, and arrangement of the FAR and HHSAR and will be applicable only within the organization issuing it. One copy of all OPDIV or lower level material issued in looseleaf format shall be furnished the Director, Office of Procurement and Logistics Policy at the times of issuance.

(d) Material issued by OPDIV or lower level organizations to implement and supplement the HHSAR and FAR shall be identified by prefixes to the digit 3 (indicating Chapter 3-HHSAR) as follows, and shall use the same numbering system as the HHSAR:

Organization	Prefix
Office of the Secretary	OS
Health Care Financing Administration	HCFA
Office of Human Development Services	OHDS
Public Health Service	PHS
Alcohol, Drug Abuse, and Mental Health Administration	ADAMHA
Centers for Disease Control	CDC
Food and Drug Administration	FDA
Health Resources and Services Administration	HRSA
National Institutes of Health	NIH
Social Security Administration	SSA

Each OPDIV or lower level acquisition regulation will be included in its entirety as a separate appendix to 48 CFR Chapter 3. The Director, Office of Procurement and Logistics Policy will assign the appendix designation upon approval of the initial request to establish the OPDIV or lower level acquisition regulation.

[49 FR 13961, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984; 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

Subpart 301.4—Deviations From the FAR

301.403 Individual deviations.

Requests for individual deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded through administrative channels to the Director, Office of Procurement and Logistics Policy for review and approval.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.404 Class deviations.

Requests for class deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded through administrative channels to the Director, Office of Procurement and Logistics Policy for review and approval.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.470 Procedure.

(a) When a contracting activity or contracting office determines that a deviation is needed, it shall prepare a deviation request in memorandum form and forward it through administrative channels to the Director, Office of Procurement and Logistics Policy as stated in 301.403 or 301.404. In an exigency situation, the contracting activity or contracting office may request a deviation verbally, but is required to confirm the request in writing as soon as possible.

(b) A deviation request shall clearly and precisely set forth the:

(1) Nature of the needed deviation;

(2) Identification of the FAR or HHSAR from which the deviation is needed;

(3) Circumstances under which the deviation would be used;

(4) Intended effect of the deviation;

(5) Time-frame; and

(6) Reasons which will contribute to complete understanding and support of the requested deviation. A copy of pertinent background papers such as a form or contractor's request should accompany the deviation request.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

Subpart 301.5—Agency and Public Participation

301.501 Solicitation of agency and public views.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.501-2 Opportunity for public comments.

(b) Public opportunity for comment on proposed changes or additions to the HHSAR or lower level acquisition regulations will be offered whenever the proposed regulation will have an impact on the public and/or contractors. This will be accomplished by publishing a notice of proposed rulemaking in the FEDERAL REGISTER which will include the proposed language and the background and rationale for the proposed regulation. Comments will not be solicited directly from professional or industry associations or other interested parties; they will be expected to respond based upon the FEDERAL REGISTER notification. Normally, the public will be given 45 days to comment. Proposed changes or additions to the HHSAR or FAR shall be staffed to the Executive Committee for Acquisition in accordance with 301.270.

[49 FR 13961, Apr. 9, 1984. Redesignated and amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.501-3 Exceptions.

(e) Comments will not be solicited from the public when the change or addition to the HHSAR or lower level acquisition regulation is deemed procedural in nature and concerns internal administrative directions aimed at departmental personnel (see FAR 1.301(b)).

[49 FR 13961, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984. Redesignated and amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

301.503 Public meetings.

Public meetings will not normally be used to solicit comments or views on HHSAR or lower level acquisition regulations. However, when the topic is so controversial that the Department or OPDIV believes a public meeting would be beneficial, public meetings will be convened.

[49 FR 13961, Apr. 9, 1984. Redesignated at 50 FR 23127, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

Subpart 301.6—Contracting Authority and Responsibility

SOURCE: 53 FR 15562, May 2, 1988, unless otherwise noted.

301.603 Selection, appointment, and termination of appointment.

301.603-1 General.

(a) The appointment and termination of appointment of contracting officers shall be made by the principal official responsible for acquisition (PORA). This authority is not delegable. The head of the contracting activity shall ensure that only the PORA is redelegated, and exercises, this authority.

(b) Only GS-1105 and 1106 and GS/GM-1101 and 1102 personnel shall be appointed as contracting officers (see 301.603-3(b)).

(c) The appointment of contracting officers shall be made at one of the four levels specified under the HHS Acquisition Certification Program (see 301.603-3(b)).

(d) An individual shall be appointed only in instances where a valid organizational need for a contracting officer can be demonstrated or a replacement position is to be filled. Factors to be considered in assessing the need for a contracting officer appointment include volume of actions, complexity of work, and structure of the organization.

301.603-2 Selection.

(a) When an organizational need for a contracting officer is determined or a replacement is required, an official (usually the prospective contracting officer's immediate supervisor) will nominate a contracting officer candidate. The nomination shall be accompanied by the candidate's current Standard Form (SF) 171, Personal Qualifications Statement, that contains all relevant information, to include that stated in FAR 1.603-2, a copy of the nominee's most recent performance appraisal, and a copy of the certificate issued under the HHS Acquisition Certification Program indicating the current level of certification.

(b) The PORA shall review the submitted material to determine the candidate's ability to perform the contracting functions required to meet the organizational need. If the PORA requires additional information to make the decision, it shall be provided expeditiously by the nominating official.

301.603-3 Appointment.

(a) Contracting officer appointments shall become effective when the PORA signs the Standard Form 1402, Certificate of Appointment. SF 1402's shall be prepared and maintained in accordance with FAR 1.603-3.

(b) Appointments shall be made at one of the four levels established by the HHS Acquisition Certification Program. Therefore, the contracting officer candidate must meet the minimum eligibility requirements of certification for one of the four stated levels. The level will be determined by the organizational need or position being refilled (replacement). The four levels are as follows:

(1) *Level I—Purchasing Agent.* Mandatory for all personnel who have signature authority for small purchases (GS-1102, 1105, and 1106), including orders from GSA sources.

(2) *Level II—Acquisition Official.* Mandatory for those in the GS-1102 series. Sufficient for delegation of contracting officer authority to a maximum of $100,000.

(3) *Level III—Senior Acquisition Official.* Mandatory for those in the GS-1102 series for delegation of contracting officer authority above $100,000.

(4) *Level IV—Acquisition Manager.* Mandatory for preaward review and approval authority as specified in HHSAR Subpart 304.71.

(c) Changes to contracting officer appointments, either increasing or decreasing the warrant limitations, shall be made by the PORA. Changes must be made from one of the four certification levels to another, or within one of the certification levels, and must be implemented by the PORA's issuance of a new SF 1402 to replace the existing SF 1402.

(d) Personnel shall not ordinarily be appointed as contracting officers if they do not meet the qualifications prescribed for one of the four certification levels. However, if it is essential to appoint a contracting officer who does not fully meet the certification qualifications, an interim appointment may be granted by the PORA. The PORA shall require as a condition of the interim appointment that all training or experience requirements be met within a six month time period. Usually, interim appointments shall not exceed six months. Failure to successfully complete the necessary training requirements or gain the experience within this time frame will result in termination of the appointment, unless the PORA determines that unusual circumstances prevented the attainment of either. In this instance, one additional six month interim appointment may be issued, but no more shall be allowed. The PORA shall fully document all interim appointment actions.

(e) The original SF 1402 shall be provided to the contracting officer, and a copy shall be retained by the PORA. Another copy of the SF 1402 along with the SF 171 material shall be forwarded to the servicing personnel office for inclusion in the individual's personnel file folder. Files on individuals should not be established by the PORA.

301.603-4 Termination.

Termination of contracting officer appointments shall be executed by the PORA in accordance with FAR 1.603-4.

301.603-70 Delegation of contracting officer responsibilities.

(a) Non-GS/GM-1101 or 1102 or GS-1105 or 1106 personnel shall only be delegated contracting officer responsibilities when determined necessary by a warranted contracting officer (holder of a valid SF 1402), and in accordance with this subsection. Personnel, such as a contracting officer's representative or an ordering officer, shall be delegated only the needed responsibilities by the warranted contracting officer in a written memorandum of delegation which clearly states any limitations on the delegation. Personnel who are not in the GS/GM-1101 or 1102 or GS-1105 or 1106 job series shall not be issued a SF 1402, Certificate of Appointment.

(b) Non-acquisition personnel who are delegated acquisition responsibilities shall be required to have the training, experience, and education requirements necessary for the responsibilities assigned. If, for example, responsibility is to be delegated for making small purchases, the training, education, and experience for Level I—Purchasing Agent, or its equivalent as determined by the PORA, shall be required.

301.670 Head of the contracting activity.

301.670-1 Responsibility.

The head of the contracting activity (HCA) is responsible for conducting an effective and efficient acquisition program. Adequate controls shall be established to assure compliance with applicable laws, regulations, procedures, and the dictates of good management practices. Periodic reviews shall be conducted by qualified personnel, preferably assigned to positions other than in the contracting office being reviewed, to determine the extent of adherence to prescribed policies and regulations, and to detect a need for guidance and/or training.

301.670-2 Designation.

Each OPDIV head and PHS agency head has been designated as HCA along with the following officials:

(a) Deputy Assistant Secretary for Procurement, Assistance and Logistics;

(b) Deputy Assistant Secretary for Administrative and Management Services, OS; and

(c) Each Regional Director.

301.670-3 Redelegation.

(a) The heads of contracting activities may redelegate their HCA authorities to the extent that redelegation is not prohibited by the terms of their respective delegations of authority, by law, by the Federal Acquisition Regulation, by the HHS Acquisition Regulation, or by other regulations. However, HCA and other contracting approvals and authorities shall not be redelegated below the levels specified in the HHS Acquisition Regulation or, in the absence of coverage in the HHS Acquisition Regulation, the Federal Acquisition Regulation. To ensure proper control of redelegated acquisition authorities, HCA's shall maintain a file containing successive delegations of HCA authority through and including the contracting officer level.

(b) Personnel delegated responsibility for acquisition functions must possess a level of experience, training, and ability commensurate with the complexity and magnitude of the acquisition actions involved.

Subpart 301.7—Determinations and Findings

Source: 50 FR 23127, May 31, 1985 (interim rule) and 50 FR 38004, Sept. 19, 1985 (final rule), unless otherwise noted.

301.703 Class determinations and findings.

(b) All class determinations and findings (D&F's) shall be limited to a period of one year or less.

301.704 Content.

An example of a D&F format may be found in 316.301-3(c). All D&F's shall be prepared using the referenced format and shall include the information required by FAR 1.704(a)-(g).

PART 302—DEFINITIONS OF WORDS AND TERMS

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 302.1—Definitions

302.100 Definitions of terms.

"Chief of the contracting office" (CCO) is a mid-level management official in charge of a contracting office who controls and oversees the daily contracting operation of an Operating Division (OPDIV) or major component of an OPDIV. The CCO is subordinate to the principal official responsible for acquisition and is located at a management level above other contracting personnel, usually as a branch chief.

"Head of the agency" or "agency head" means the head of the Operating Division (OPDIV) for HCFA, OHDS, PHS, and SSA, or the Assistant Secretary for Management and Budget (ASMB) for the Office of the Secretary (OS).

"Head of the contracting activity" (HCA)—see 301.670-2.

"Principal official responsible for acquisition" (PORA) is defined in terms of certain organizational positions within the Office of Administrative and Management Services (OAMS-OS), Health Care Financing Administration (HCFA), Office of Human Development Services (OHDS), Office of the Assistant Secretary for Health (OASH), Alcohol, Drug Abuse, and Mental Health Administration

(ADAMHA), Centers for Disease Control (CDC), Food and Drug Administration (FDA), Health Resources and Services Administration (HRSA), National Institutes of Health (NIH), Social Security Administration (SSA), and the Regional Offices (RO's), as follows:

OAMS-OS—Director, Division of Contract Operations

HCFA—Director, Division of Procurement Services, Office of Management and Budget

OHDS—Director, Grants and Contracts Management Division, Office of Management Services

OASH—Director, Division of Acquisitions Management, Administrative Services Center, Office of Management

ADAMHA—Director, Division of Grants and Contracts Management, Office of the Administrator

CDC—Director, Procurement and Grants Office, Office of the Center Director

FDA—Director, Division of Contracts and Grants Management, Office of the Associate Commissioner for Management and Operations

HRSA—Director, Division of Grants and Procurement Management, Office of Management

NIH—Director, Division of Contracts and Grants, Office of Administration (For acquisitions assigned to the Division of Contracts and Grants)

NIH—Director, Division of Procurement, Office of Research Services (For acquisitions assigned to the Division of Procurement)

SSA—Director, Office of Acquisition and Grants, Office of Management, Budget and Personnel

RO's—Director, Regional Administrative Support Center

The PORA is subordinate to the head of the contracting activity and is the official in charge of the major contracting operation activity within the OPDIV, agency, staff office, or regional office.

[49 FR 13964, Apr. 9, 1984, as amended at 51 FR 23231, June 26, 1986; 51 FR 44293, Dec. 9, 1986; 52 FR 27558, July 22, 1987]

PART 303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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303.101 Standards of conduct.

303.101-3 Agency regulations.

Subpart 303.2—Contract Gratuities to Government Personnel

303.203 Reporting suspected violations of the Gratuities clause.

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303.303 Reporting suspected antitrust violations.

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303.408-1 Responsibilities.

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303.602 Exceptions.

Subpart 303.7—Voiding and Rescinding Contracts

303.704 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13964, Apr. 9, 1984, unless otherwise noted.

Subpart 303.1—Safeguards

303.101 Standards of conduct.

303.101-3 Agency regulations.

The Department of Health and Human Services' Standards of Conduct are prescribed in Part 73 of Title 45.

Subpart 303.2—Contractor Gratuities to Government Personnel

303.203 Reporting suspected violations of the Gratuities clause.

Departmental personnel shall report suspected violations of the Gratuities clause in accordance with Subpart M, Reporting Violations, of the Department's Standards of Conduct (45 CFR Part 73) and General Administration Manual Chapter 5-10, rather than as specified in FAR 3.203. Refer to Subpart E, Gifts, Entertainment, and Favors, of 45 CFR Part 73 for an explanation regarding what is prohibited and what is permitted.

Subpart 303.3—Report of Suspected Antitrust Violations

303.303 Reporting suspected antitrust violations.

A copy of each report of suspected antitrust violations submitted to the Attorney General shall also be submitted to the Deputy Assistant Secretary for Procurement, Assistance and Logistics.

Subpart 303.4—Contingent Fees

303.408 Evaluation of the SF 119.

303.408-1 Responsibilities.

(b) The chief of the contracting office shall perform the review required by FAR 3.408-1(b) and should consult with the Office of General Counsel, Business and Administrative Law Division, when deemed necessary.

303.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Reports shall be made promptly to the contracting officer.

(4) Suspected fraudulent or criminal matters to be reported to the Department of Justice shall be prepared in letter format and forwarded through acquisition channels to the head of the contracting activity for signature. The letter must contain all pertinent facts and background information considered by the contracting officer and chief of the contracting office that led to the decision that fraudulent or criminal matters may be present. A copy of the signed letter shall be sent to the Deputy Assistant Secretary for Procurement, Assistance and Logistics.

Subpart 303.5—Other Improper Business Practices

303.502 Subcontractor kickbacks.

(b) Any known or suspected violations of the Anti-Kickback Act (41 U.S.C. 51-54) shall be reported to the contracting officer who shall investigate the matter, document the findings, and report the results to the chief of the contracting office. If the results substantiate the known or suspected violation, the chief of the contracting office shall notify the Office of General Counsel, Business and Administrative Law Division and report the matter, through acquisition channels, to the head of the contracting activity. The head of the contracting activity shall take appropriate action is consonance with the Act, and notify the Deputy Assistant Secretary for Procurement, Assistance and Logistics of the case and its disposition.

Subpart 303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

303.602 Exceptions.

Approval of an exception to the policy stated in FAR 3.601 shall be made by the head of the OPDIV (Assistant Secretary for Management and Budget in OS cases) or the Regional Director.

Subpart 303.7—Voiding and Rescinding Contracts

303.704 Policy.

For the purposes of implementing FAR Subpart 3.7, the authorities granted to the "agency head or designee" shall be exercised by the principal official responsible for acquisition.

[51 FR 44293, Dec. 9, 1986]

PART 304—ADMINISTRATIVE MATTERS

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13965, Apr. 9, 1984, unless otherwise noted.

Subpart 304.1—Contract Execution

304.101 Contracting officer's signature.

An original of each bilateral contract or modification shall be executed by the contractor and contracting officer. An original of each unilateral contract or modification shall be executed by the contracting officer. The contracting officer need only sign the original when carbon paper is used in sets of forms such as Standard Form 44 or Optional Form 347 or 348. A legible carbon impression of the contracting officer's signature shall carry the same force and effect as a pen and ink signature for unilateral contracts.

304.170 Ratification of unauthorized contract awards.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the HHSAR, and good acquisition practice; e.g., certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met; i.e., certification of the availability of funds, determinations and findings, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, negotiation of appropriate contract clauses, etc.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may be later ratified. To be effective, the ratification must be in the form of a written document clearly stating that ratification of a previously unauthorized act is intended and must be signed by the head of the contracting activity, provided the head of the contracting activity could have granted authority to enter into the commitment at the time it was made and still has the power to do so. Contracting officers shall not ratify contractual commitments made by other personnel of the Department without the prior approval of the head of the contracting activity. (This approval authority may be redelegated to a designee not lower than the principal official responsible for acquisition.)

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to: a statement as to why the contracting office was not used, a statement as to why the proposed contractor was selected, a list of other sources considered, a description of work to be performed or products to be furnished, the estimated or agreed contract price, a citation of the appropriation available, and a statement of whether the contractor has commenced performance.

(2) The contracting officer will review the file and forward it to the head of the contracting activity with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the head of the contracting activity will coordinate the request for ratification with the Office of General Counsel, Business and Administrative Law Division.

(3) If ratification is authorized by the head of the contracting activity, the file will be returned to the contracting officer for issuance of a purchase order or contract, as appropriate, along with the ratification document.

(4) Heads of contracting activities or their designees will report the number and dollar value of requests for ratifications received and ratifications authorized each calendar quarter. Reports shall be submitted in an original and one copy to the Deputy Assistant Secretary for Procurement, Assistance and Logistics to arrive no later than 30 calendar days after the close of each calendar quarter.

Subpart 304.2—Contract Distribution

304.201 Procedures.

The signed original of bilateral contracts and modifications shall be placed in the contract file, and duplicate originals shall be furnished the contractor, the appropriate accounting point, the project officer, and other individuals or offices, as applicable. Purchase orders, delivery orders, and other unilateral contracts and modifications shall be distributed the same as bilateral contracts except the original shall be furnished the contractor or seller. Copies of unilateral contracts and modifications with carbon impressioned signatures may be used but must be stamped "DUPLICATE ORIGINAL" (see 304.101).

[49 FR 36110, Sept. 14, 1984]

Subpart 304.6—Contract Reporting

304.602 Federal Procurement Data System.

The Department-wide Contract Information System (DCIS) represents the Department's implementation of the FPDS. All departmental contracting activities are required to participate in the DCIS and follow the procedures stated in the Contract Information System Manual and amendments to it. The principal official responsible for acquisition shall ensure that all required contract information is collected, submitted, and received into the DCIS on or before the 15th of each month for all appropriate contract and contract modification awards of the prior month.

[49 FR 13965, Apr. 9, 1984. Redesignated at 51 FR 44293, Dec. 9, 1986]

Subpart 304.8—Contract Files

304.801 General.

OPDIVs shall prescribe the contents of contract files and establish filing procedures consistent with the nature of the contracting actions and in accordance with FAR 4.801, 4.802, and 4.803. Contract files should contain an index of the contents to facilitate review and should be separated into logical categories (see FAR 4.803).

304.804 Closeout of contract files.

304.804-1 Closeout by the office administering the contract.

(3) Files for all cost-reimbursement type contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion (see FAR 4.804-4). The contracting officer responsible for contract closeout may negotiate settle-

ment of indirect costs for a specific contract, in advance of the determination of final indirect cost rates in accordance with FAR 42.708.

304.870 Closing review.

(a) Contracting officers shall assure the applicable items in FAR 4.804-5, other than a field audit, have been accomplished prior to closing any physically completed contract. Cost-reimbursement type contracts will be subject to the additional requirements set forth below before they may be closed.

(b) Contracting officers shall use the instructions in the October 5, 1982 memorandum from the Deputy Assistant Secretary for Procurement, Assistance and Logistics to closeout cost-reimbursement type contracts physically completed prior to fiscal year 1977 and cost-reimbursement type contracts completed subsequent to that date for which field audit information is available.

(c) Contracting officers shall closeout all other cost-reimbursement type contracts physically completed after September 30, 1977 in accordance with the following procedures:

(1) Field audits will be conducted for contracts in excess of $250,000 awarded to commercial organizations and non-profit organizations other than colleges and universities, hospitals and State and local units of government for which an agency other than HHS has audit cognizance. Field audits will also be conducted each year on approximately 25 of the same type contractors for which HHS has audit cognizance. These contracts may be closed after receipt of the field audit report.

(2) Contracts of any dollar value with non-proprietary colleges and universities, hospitals and State and local units of government and contracts not in excess of $250,000 with other institutions/organizations shall be closed out on the basis of a desk audit. The desk audit should include (i) a confirmation from the project officer that labor, material, travel, and other types of direct costs are commensurate with contract requirements, (ii) a review of available audit reports to determine if any adjustments were made that may be applicable to the contract under review, and (iii) discussions with the cognizant government auditor when considered appropriate. These contracts shall be closed with the condition that they are subject to adjustment should an on-site audit be conducted at a later date and should unallowable costs be identified as a result of that audit. The release executed by the contractor shall contain the following:

> The Contractor agrees, pursuant to the clause in this contract entitled Allowable Cost (for cost-reimbursement contracts) or Allowable Cost and Fixed Fee (for CPFF contracts), that the amount of any sustained audit exceptions resulting from any audit made after final payment will be refunded to the Government.

(3) The contracting officer may request a field audit of any contract when, in his/her judgment, the risk attendant with the contract warrants it. The contracting officer, however, shall exercise discretion in requesting such audits on creditable evidence such as unsatisfactory dealings with the contractor during the period of contract performance, prior audit reports containing serious findings against the contractor, the known experience of other government officials in dealing with the contractor when the contracting officer is personally knowledgeable about the circumstances, formal third party complaints or allegations which bear upon the contractor's integrity or the propriety of costs charged to the Government, and other comparable allegations or advice of a derogatory nature about the contractor made by responsible individuals which in the contracting officer's judgment should be investigated. Except where a contracting officer suspects misrepresentation or fraud, audits should not be requested if their cost of performance is likely to exceed their potential cost recovery.

(4) When an audit is warranted prior to closing out a contract, the contracting officer should request the audit directly from the Department of Health and Human Services Office of the Inspector General, Office of Audits (HHSOA). The request should cite the reasons the contracting officer believes an audit is warranted. A copy of

the request should be forwarded to the Office of Procurement, Assistance and Logistics (OPAL), ASMB. In the event the Office of the Inspector General cannot honor the request in a reasonable period of time, it will consult with OPAL and the contracting officer. The final decision on the need and scope of an audit will be made on the basis of the value of the contract, the nature of the contracting officer's concerns, and the availability of HHSOA or other existing resources in the Department to perform a review to satisfy the contracting officer's concerns.

(5) Closeout procedures are to be followed in conjunction with the regular procedures now followed in administering contracts. These procedures are not meant or to be interpreted as imposing any requirement or responsibility on contracting officers or necessitating any reviews on the part of the contracting officials not currently required by the FAR. With some rare exceptions, Standard Form 1035, Public Voucher for Purchases and Services Other than Personal, or Form HHS 646, Financial Report of Individual Project/Contract, will contain sufficient information to allow a contracting officer to satisfy requirements for desk audits. Accordingly, these closeout procedures shall not cause contracting officers to engage in extraordinary oversight or review and shall not be used by contracting officers as the basis for requiring contractors to submit extraordinary documentation such as payroll listing, labor billings, travel details, etc.

Subpart 304.70—Acquisition Instrument Identification Numbering System

304.7000 Scope of subpart.

This subpart prescribes policy and procedures for assigning identifying numbers to contracts and related instruments, including solicitation documents, purchase orders, and delivery orders.

304.7001 Numbering contracts.

(a) *Contracts which require numbering.* The following contracts shall be numbered in accordance with the system prescribed in paragraph (b) of this section:

(1) All contracts, including letter contracts and task orders under basic ordering agreements, which involve the payment of $2,500 or more for the acquisition of personal property or nonpersonal services.

(2) All contracts which involve the payment of $2,000 or more for construction (including renovation or alteration).

(3) All contracts which involve more than one payment regardless of amount.

(The number assigned to a letter contract shall be assigned to the superseding definitized contract.)

(b) *Numbering system.* All contracts which require numbering shall be assigned a number consisting of the following:

(1) The three digit code assigned to the contracting office by the Division of Management Information Systems Services, OMAS, OS;

(2) A two digit fiscal year designation; and

(3) A four digit serial number. While it is required that a different series of four digit serial numbers be used for each fiscal year, serial numbers assigned need not be sequential.

(c) *Illustration of contract numbers.* The initial contract executed by the Division of Contract and Grant Operations, Office of Management Services, Office of the Secretary, for fiscal year 1983 should be numbered 100-83-0001, the second contract 100-83-0002. Alternatively, if it is desirable for internal identification purposes to establish separate series of numbers for sealed bid and negotiated contracts, this procedure is permissible. In this instance, the initial sealed bid contract might be numbered 100-83-0001 and the initial negotiated contract numbered 100-83-0500.

(d) *Assignment of identification codes.* Each contracting office of the Department shall be assigned a three digit identification code by the Division of Management Information Systems Services. Requests for the assignment of such codes for newly established contracting offices shall be submitted by the headquarters acquisition staff office of the contracting activity to the Director, Division of Management Information Systems Services. Conversely, in the event that a contracting office is to be disestablished, the Director, Division of Management Information Systems Services shall be notified. A listing of the contracting office identification codes currently in use is contained in the Department-wide Contract Information System Manual (DCIS).

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

304.7002 Numbering solicitation documents.

Requests for proposals and invitations for bids shall be numbered in accordance with procedures prescribed by the headquarters staff office of the contracting activity.

304.7003 Numbering purchase and delivery orders.

Contracting offices shall establish procedures for numbering purchase orders as required for effective identification and control.

304.7004 Numbering basic agreements.

Basic agreements shall be numbered in accordance with procedures prescribed by the headquarters staff office of the cognizant contracting activity. However, individual contracts entered into pursuant to the terms and conditions of a basic agreement shall be numbered in accordance with 304.7001(b).

304.7005 Numbering basic ordering agreements.

Basic ordering agreements shall be numbered in accordance with procedures prescribed by the headquarters staff office of the contracting activity.

[49 FR 13965, Apr. 9, 1984, as amended at 53 FR 15563, May 2, 1988]

Subpart 304.71—Review and Approval of Proposed Contract Awards

304.7100 Scope of subpart.

This subpart prescribes review and approval procedures for contract actions to ensure that:

(a) Contract awards are in conformance with law, established policies and procedures, and sound business practices;

(b) Contractual documents properly reflect the mutual understanding of the parties; and

(c) The contracting officer is informed of deficiencies and items of questionable acceptability and corrective action is taken.

304.7101 Contracts requiring review and approval.

(a) *General.* All contractual documents, regardless of dollar value, are to be reviewed by the contracting officer prior to award, even if the review and approval procedures prescribed in this section are applicable. However, under no circumstances may the individual who signs a contract instrument as contracting officer perform final review and approval of that contract action if it, or any modification to it, is expected to exceed the levels set forth in (b) (1) or (2) below.

(b) *Required reviews and approvals.* (1) Officials responsible for the acquisition function in the Office of the Secretary, OPDIVs (except the Public Health Service), and regional offices are to assure that sealed bid or negotiated contracts, and/or modifications to them, expected to exceed $300,000, are reviewed and approved prior to award. In order to assure the propriety of smaller dollar acquisitions, a statistically significant sample of contract actions not expected to exceed $300,000 are to be reviewed and approved prior to award.

(2) Contract actions of the Public Health Service are to be reviewed and approved prior to award in accordance with the dollar thresholds stated in Subpart PHS 304.71. In order to assure the propriety of smaller dollar acquisitions, a statistically significant sample of contract actions not expect-

ed to exceed those dollar thresholds referenced in Subpart PHS 304.71 are to be reviewed and approved prior to award.

(c) *Reviewing officials.* Officials assigned responsibility for review and approval of contract actions must possess qualifications in the field of acquisition commensurate with the level of review performed, and, as a minimum, possess those acquisition skills expected of a contracting officer. The following officials are responsible for preaward contract review and approval:

Office of the Secretary—
  Director, Division of Contract and Grant Operations, Office of Management Services
  Director, Division of Contract Operations, Office of Administrative and Management Services
Office of Human Development Services—Director, Grants and Contracts Management Division
Social Security Administration—Director, Office of Acquisition and Grants (may be redelegated to the appropriate division direction within the Office of Acquisition and Grants)
Health Care Financing Administration—Director, Division of Procurement Services.
Public Health Service—The reviewing official is designated in Subpart PHS 304.71, as approved by the Director, Office of Procurement and Logistics Policy, OPAL.

However, if any of the officials are to serve as the contracting officer and sign the contractual document, the review and approval function shall be performed by an appropriate official at least one level above.

(d) *Regional offices.* The Director, Regional Administrative Support Center (RASC) is responsible for review and approval of contracts, or modifications to them, expected to exceed $300,000 and executed by the regional office's contracting staff. The RASC may obtain the advice of the Regional Attorney in the review of proposed contract awards.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23127, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 51 FR 44293, Dec. 9, 1986; 52 FR 27558, July 22, 1987]

304.7102 Conduct of the review.

(a) *General.* Reviewing officials may solicit the participation of specialists in various technical and administrative disciplines to aid in the review. The method of the review is not prescribed here in order to permit discretionary judgment in determining the depth to which significant areas are to be examined.

(b) *Contract file.* The reviewer is to:

(1) Determine that the contract file constitutes an independent record, documented to provide a complete chronology of actions related to all aspects of the acquisition, and that the documentation is consistent with the requirements of FAR 4.803;

(2) Determine that each contract file contains documentation or other data (i.e., technical and business management evaluation, cost advisory and audit reports, negotiation memorandum, etc.) sufficient to explain and support the rationales, judgments, and authorities upon which all decisions and actions were predicated; and

(3) Ascertain:

(i) If the proposed acquisition action is to be awarded by other than full and open competition, that the documentation and approvals supporting the decision are present in the contract file;

(ii) That proper publicizing of the proposed acquisition was made pursuant to FAR Part 5;

(iii) That approval was obtained for any deviation from prescribed contract clauses;

(iv) That sufficient competition was obtained, the competitive range was appropriately determined, and oral or written discussions were conducted with all firms in the competitive range;

(v) That all the rules set forth in FAR Part 14 were complied with when the proposed award is a result of an IFB; and

(vi) That appropriate determinations and findings which justify the type of contract and advance payments are a part of the contract file.

[49 FR 13961, Apr. 9, 1984, as amended at 50 FR 23127, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

304.7103 Approvals.

(a) Awards are not to be made until approval is granted by the reviewing official identified in 304.7101. All approvals are to be in writing, except that when time is of the essence approval may be given orally and subsequently confirmed in writing.

(b) The reviewing official shall not approve a proposed contract award if a substantive issue (or issues) remains to be resolved. However, in appropriate circumstances, the reviewing official may use discretion and grant approval on a conditional basis and require the contracting officer to submit follow-up written documentation that the substantive issue has been resolved. This provides the reviewing official the option to require the contracting officer to resolve the substantive issue and submit documenting evidence before award approval is given, or to grant conditional approval providing the substantive issue is resolved before the contract is awarded and require the contracting officer to submit documenting evidence either before or after the award. The reviewing official also has the option to determine the extent of documentation evidence to be submitted by the contracting officer. This may range from complete resubmission of the contract file to submission of a memorandum stating the contracting officer's actions in resolving the substantive issue.

SUBCHAPTER B—ACQUISITION PLANNING

PART 305—PUBLICIZING CONTRACT ACTIONS

Subpart 305.1—Dissemination of Information

Sec.
305.102 Availability of solicitations.

Subpart 305.2—Synopsis of Proposed Contract Actions

305.202 Exceptions.

Subpart 305.5—Paid Advertisements

305.502 Authority.
305.503 Procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13969, Apr. 9, 1984, unless otherwise noted.

Subpart 305.1—Dissemination of Information

305.102 Availability of solicitations.

Potential offerors or bidders must be allowed a reasonable period of time in which to request and receive a solicitation and prepare and submit a response to that solicitation. As a result, the Department has established thirty (30) calendar days as the minimum time period between the date of distribution of a solicitation and the date set for receipt of proposals (opening of bids). The minimum 30 calendar day period is applicable to all sealed bid and negotiated acquisitions and for small purchases over $10,000. Adequate quantities of the solicitation must be maintained to fulfill all anticipated requests during the 30 calendar day period. If a solicitation response period greater than 30 calendar days is used, or, in an urgent situation, a response period less than 30 calendar days is used, the contracting officer must ensure that adequate quantities of the solicitation are available to fulfill all anticipated requests. (A solicitation response period of less than 30 calendar days may be used when the contracting officer determines that the urgency for the supplies or services does not permit delay. This decision must be documented in the contract file.) See FAR 5.203 for publicizing and response time.

[49 FR 13969, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984; 50 FR 23126, 23127, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

Subpart 305.2—Synopsis of Proposed Contract Actions

305.202 Exceptions.

(b) When a contracting office believes that it has a situation where advance notice is not appropriate or reasonable, it shall prepare a memorandum citing all pertinent facts and details and send it, through normal acquisition channels, to the Deputy Assistant Secretary for Procurement, Assistance, and Logistics (DASPAL) requesting relief from synopsizing. The DASPAL shall review the request and decide whether an exception to synopsizing is appropriate or reasonable. If it is, the DASPAL shall take the necessary coordinating actions required by FAR 5.202(b). Whatever the decision is on the request, the DASPAL shall promptly notify the contracting office when a determination has been made.

[51 FR 44293, Dec. 9, 1986]

Subpart 305.5—Paid Advertisements

305.502 Authority.

The contracting officer is authorized to publish advertisements, notices, and contract proposals in newspapers and periodicals in accordance with the requirements and conditions referenced in FAR Subpart 5.5.

305.503 Procedures.

Requests for acquisition of advertising shall be accompanied by written authority to advertise or publish which sets forth justification and includes the names of newspapers or journals concerned, frequency and dates of proposed advertisements, estimated cost, and other pertinent information. Paid advertisements shall be limited to the publication of essential details of grant announcements, invitations for bids, and requests for proposals, including those for the sale of personal property, and for the recruitment of employees.

PART 306—COMPETITION REQUIREMENTS

Subpart 306.2—Full and Open Competition After Exclusion of Sources

Sec.
306.202 Establishing or maintaining alternative sources.

Subpart 306.3—Other Than Full and Open Competition

306.302 Circumstances permitting other than full and open competition.
306.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.
306.302-7 Public Interest.
306.303 Justifications.
306.303-1 Requirements.
306.303-2 Content.
306.304 Approval of the justification.

Subpart 306.4—Sealed Bidding and Competitive Proposals

306.401 Sealed bidding and competitive proposals.

Subpart 306.5—Competition Advocates

306.501 Requirement.
306.502 Duties and responsibilities.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 23127, May 31, 1985 (interim rule), and 50 FR 38004, Sept. 19, 1985 (final rule), unless otherwise noted.

Subpart 306.2—Full and Open Competition After Exclusion of Sources

306.202 Establishing or maintaining alternative sources.

(a) The reference to the agency head in FAR 6.202(a) shall mean the appropriate competition advocate cited in 306.501.

(b)(1) The required determination and findings (D&F) shall be prepared by the contracting officer based on the data provided by program personnel, and shall be signed by the appropriate competition advocate. The D&F signatory authority is not delegable.

[50 FR 23127, May 31, 1985, and 50 FR 38004, Sept. 19, 1985, as amended at 51 FR 44293, Dec. 9, 1986]

Subpart 306.3—Other Than Full and Open Competition

306.302 Circumstances permitting other than full and open competition.

306.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.* (2)(ii) Follow-on contracts for the continuation of major research and development studies on long-term social and health programs, major research studies, or clinical trails may be deemed to be available only from the original source when it is likely that award to any other source would result in unacceptable delays in fulfilling the Department's or OPDIV's requirements.

(b) *Application.* (4) When the OPDIV head has determined that: (i) a specific item of technical equipment or parts must be obtained to meet an activity's program responsibility to test and evaluate certain kinds and types of products, and only one source is available. (This criterion is limited to testing and evaluation purposes only and may not be used for initial outfitting or repetitive acquisitions. Project officers should support the use of this criterion with citations from their agency's legislation and the technical rationale for the item of equipment required.) or

(ii) There is existing equipment which, for reasons of compatibility and interchangeability, requires an item which is manufactured only by one source. (This criterion is for use in acquisitions where a particular brand name item is required, and an "or equal" will not meet the Government's requirements. This criterion may not be used when there are other manufacturers available which may be able to produce acceptable items even though their products might require some adjustments and modifications. These other manufacturers must be given the opportunity to compete.)

[50 FR 23127, May 31, 1985, and 50 FR 38004, Sept. 19, 1985, as amended at 51 FR 44293, Dec. 9, 1986]

306.302-7 Public interest.

(a) *Authority.* (2) Agency head, in this instance, means the Secretary.

(c) *Limitations.* When using the authority cited in FAR 6.302-7(a)(1), the Secretary's approval must be obtained. Therefore, an "approval package" must be prepared and staffed through departmental acquisition channels to the Secretary. The package shall include:

(1) A determination and findings, prepared by the contracting officer, for the Secretary to sign.

(2) A letter for the Secretary to sign notifying Congress of the determination to award a contract under the authority of 41 U.S.C. 253(c)(7). This letter must be received by Congress at least 30 days before contract award.

(3) A "Justification for Other than Full and Open Competition" (JOFOC).

(4) A briefing paper presenting background, need, etc.

(5) Any other pertinent papers or documents required by the Department.

306.303 Justifications.

306.303-1 Requirements.

(b) Preliminary arrangements or agreements with the proposed contractor made by someone other than the contracting officer shall have no effect on the rationale used to support an acquisition for other than full and open competition.

(f) The program office should discuss prospective other than full and open competition requests with their supporting contracting office as early as possible during the acquisition planning stage (see FAR Subpart 7.1 and Subpart 307.1), and before submitting the requisition or request for contract. The discussions may resolve uncertainties, provide program offices with names of other sources, allow proper scheduling of the acquisition, and avoid delays which might otherwise occur should it be determined that the request for other than full and open competition is not justified.

(g) When a program office desires to obtain certain goods or services by contract without full and open competition, it shall, at the time of forwarding the requisition or request for contract, furnish the contracting office a justification explaining why full and open competition is not feasible. All justifications shall be initially reviewed by the contracting officer.

(1) Justifications in excess of $25,000 shall be in the form of a separate, self-contained document, prepared in accordance with FAR 6.303 and 306.303, and called a "JOFOC" (Justification for Other than Full and Open Competition). Justifications of $25,000 or less may be in the form of a paragraph or paragraphs contained in the requisition or request for contract.

(2) Justifications, whether over or under $25,000, shall fully describe what is to be acquired, offer reasons which go beyond inconvenience, and explain why it is not feasible to obtain competition. The justifications shall be supported by verifiable facts rather than mere opinions. Documentation in the justifications should be sufficient to permit an individual with technical competence in the area to follow the rationale.

306.303-2 Content.

(a)(1) The program office and name, address, and telephone number of the project officer shall also be included.

(2) This item shall include project identification such as the authorizing program legislation, to include citations or other internal program identification data such as title, contract number, etc.

(3) A full description of the requirement and its dollar amount is to be included. It may be in the form of a statement of work, purchase description, or specification. A statement is to be included to explain whether the acquisition is an entity in itself, whether it is one in a series, or part of a related group of acquisitions.

(c) Each JOFOC shall conclude with at least the following signatory lines (other concurrence lines may be added as deemed necessary by the contracting activity):

Recommended, Project Officer ————

Date ————————————————
Concur, Project Officer's Immediate Supervisor ————————————
Date ————————————————
Concur, Contracting Officer ——————
Date ————————————————
Approved, Approving Official ——————
Date ————————————————

306.304 Approval of the justification.

(a)(1) For small purchases over $1,000 up to and including $25,000, the contracting officer is authorized to review and approve (or disapprove) the justification (see 313.106(c)(2)). For acquisitions over $25,000, but not exceeding $100,000, the JOFOC shall be submitted to the contracting officer for review. The contracting officer will either concur or nonconcur, and forward the JOFOC to the principal official responsible for acquisition for approval. (When the contracting officer and principal official responsible for acquisition are the same individual, the approval will be made by the respective official listed in 306.501.) The principal official responsible for acquisition may redelegate approval for acquisitions between $25,000 and $50,000 to the chief of the contracting office, provided that individual is at least one level above the contracting officer who will sign the contract.

(2) The competition advocates are listed in 306.501.

(3) The following shall serve as the approving officials referenced in FAR 6.304(a)(3):

HCFA—Administrator for Health Care Financing
OHDS—Assistant Secretary for Human Development Services
OS—Assistant Secretary for Management and Budget
PHS—Assistant Secretary for Health (may be delegated to the Deputy Assistant Secretary for Health Operations)
SSA—Commissioner of Social Security
RO's—Regional Director

This authority is not delegable, except as indicated for PHS.

(4) The senior procurement executive of the Department is the Assistant Secretary for Management and Budget.

(c) A class justification shall be processed the same as an individual justification.

(d) The contracting officer who receives a JOFOC for processing shall, after ascertaining that the document is complete, request advice from pricing, audit, legal, and other appropriate staff offices, and forward the JOFOC with his or her concurrence or nonconcurrence, to the appropriate approving official. When the contracting officer does not concur with the JOFOC, a written explanation setting forth the reasons must be provided the approving official. If the JOFOC is disapproved by the approving official, the contracting officer shall promptly notify the concerned program office.

(e) It is the responsibility of the approving official to determine whether a contract may properly be awarded without full and open competition. The program office and project officer are responsible for furnishing the contracting officer and approving official with pertinent supporting information necessary to make such determinations. Other staff offices shall advise the contracting officer and approving official as requested.

(1) As each justification is reviewed, the approving official should ask: why the acquisition cannot be competed, are there sufficient grounds for excluding all other actual or potential sources, what actions can be taken to obtain full and open competition in the instant acquisition, and what actions are needed to avoid the need for a subsequent or continuing acquisition that is for other than full and open competition?

Subpart 306.4—Sealed Bidding and Competitive Proposals

306.401 Sealed bidding and competitive proposals.

The requirement in FAR 6.401 to document the reasons sealed bidding is not appropriate may be accomplished by adding a sentence to the negotiation memorandum (see 315.672) specifying which criterion (or criteria) listed in FAR 6.401(a) is (are) not applicable to the acquisition.

Subpart 306.5—Competition Advocates

306.501 Requirement.

The Department's competition advocate is the Director, Office of Procurement and Logistics Policy, OPAL. The competition advocates for the Department's primary contracting offices are as follows:

HCFA—Associate Administrator for Management and Support Services
OHDS—Director, Office of Management Services
OS—Deputy Assistant Secretary for Administrative and Management Services
OASH—Director, Administrative Services Center
ADAMHA—Associate Administrator for Management
CDC—Director, Office of Program Support
FDA—Associate Commissioner for Management and Operations
HRSA—Associate Administrator for Operations and Management
NIH—(R&D)—Associate Director for Extramural Affairs (Other than R&D)—Associate Director for Intramural Affairs
SSA—Deputy Commissioner for Management.
RO's—Director, Regional Administrative Support Center

[50 FR 23127, May 31, 1985, and 50 FR 38004, Sept. 19, 1985, as amended at 52 FR 27558, July 22, 1987; 53 FR 15563, May 2, 1988]

306.502 Duties and responsibilities.

(b) The competition advocates listed in 306.501 shall assist the Department's competition advocate, when requested, by providing data and reports to aid in the accomplishment of the duties required of the Department's competition advocate as stated in FAR 6.502(a).

[50 FR 23127, May 31, 1985, as amended at 50 FR 38004, Sept. 19, 1985]

PART 307—ACQUISITION PLANNING

Subpart 307.1—Acquisition Plans

Sec.

307.104 General procedures.
307.104-1 Requirement for acquisition planning.
307.104-2 Responsibilities for acquisition planning.
307.104-3 Preparation of acquisition plan.
307.105 Contents of written acquisition plans.
307.105-1 Format and content.
307.105-2 Special program clearances or approvals.
307.105-3 Specification, purchase description, and statement of work.
307.170 Program training requirements.
307.170-1 Policy exceptions.
307.170-2 Training course prerequisites.

Subpart 307.3—Contractor Versus Government Performance

307.302 General.
307.303 Determining availability of private commercial sources.
307.304 Procedures.
307.307 Appeals.

Subpart 307.70—Considerations in Selecting an Award Instrument

307.7000 Scope of subpart.
307.7001 Applicability.
307.7002 Purpose.
307.7003 Distinction between acquisition and assistance.
307.7004 Procedures.

Subpart 307.71—Phase II Advance Acquisition Planning (Scheduling)

307.7101 Background.
307.7102 Accountability and responsibility.
307.7103 Purpose.
307.7104 Contracting activity actions.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13969, Apr. 9, 1984, unless otherwise noted.

Subpart 307.1—Acquisition Plans

307.104 General procedures.

(a) The acquisition planning document is an administrative tool designed to enable the contracting officer and project officer to plan effectively for the accomplishment of an acquisition during a specified time frame. The acquisition planning document serves as an outline of the method by which the contracting officer expects to accomplish the acquisition task.

(c) If the plan proposes using other than full and open competition, the plan shall also be coordinated with the Chief of the contracting office, acting for the competition advocate.

[49 FR 13969, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 51 FR 44293, Dec. 9, 1986]

307.104-1 Requirement for acquisition planning.

(a) The acquisition planning document is required for all new negotiated acquisitions which are expected to exceed $100,000, except the following:

(1) Acquisition of architect-engineer services;

(2) Acquisitions of utility services where the services are available from only one source; and

(3) Acquisitions made from or through other Government agencies.

(b) An acquisition planning document is also required for all two-step sealed bid acquisitions expected to exceed $100,000.

(c) The principal official responsible for acquisition shall prescribe acquisition planning procedures for:

(1) Negotiated acquisitions which are not expected to exceed $100,000;

(2) Two-step sealed bid acquisitions which are not expected to exceed $100,000; and

(3) All other sealed bid acquisitions regardless of dollar amount.

(d) An acquisition planning document is not required for a contract modification which either exercises an option or adds funds to an incrementally funded contract, provided there is an approved acquisition planning document in accordance with 307.105 and there is no significant deviation from that plan.

[49 FR 13969, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

307.104-2 Responsibilities for acquisition planning.

(a) *Planning by program and staff activities.* Whenever execution of a program or project requires the acquisition of property or services by contract, the program or project plan shall delineate all elements to be acquired by contract. The program or project plans must include a plan and time-frame for completion action.

(b) *Planning for acquisition actions.* Action should commence as early as possible to effect an orderly and balanced acquisition workload throughout a fiscal year. Project officers who expect to initiate acquisitions are required to discuss their requirements with the contracting officials who will be responsible for these acquisitions to compare current staff capabilities with anticipated requirements to achieve an even distribution of fiscal year workload consistent with program needs. These discussions should result in understandings on:

(1) The details of the acquisition plan;

(2) Schedule for the completion of the acquisition plan;

(3) Preliminary discussions on the work statement/specifications and appropriate evaluation criteria; and

(4) Preliminary discussions on the content and timing of the request for contract (RFC).

(c) *Planning by contracting activities.* Contracting activities are required to coordinate with program and staff offices to ensure:

(1) Timely and comprehensive planning for acquisitions;

(2) Timely initiation of requests for contracts; and

(3) Instruction of program and staff offices in proper acquisition practices and methods.

307.104-3 Preparation of acquisition plan.

(a) The acquisition planning document serves as an advance agreement between program and contracting personnel by outlining the methods of how and when the acquisition is to be accomplished. It serves to resolve problems early in the acquisition cycle thereby precluding delays in contract placement. It is developed prior to the preparation and submission of the formal request for contract to the contracting activity. (For detailed information concerning the request for contract, see Subpart 315.70.)

(b) The acquisition planning document shall be prepared jointly by the project officer and the contract negotiator or in accordance with procedures prescribed by the principal official responsible for acquisition.

307.105 Contents of written acquisition plans.

307.105-1 Format and content.

The Department does not prescribe a standard format for the acquisition planning document, but recommends the use of a format similar to what is provided in this section. The subject areas addressed in paragraphs (a) through (e) must be included in every acquisition planning document. An OPDIV, agency, or regional office contracting activity may prescribe a standard format for the acquisition planning document and may include additional subject areas that are pertinent to that activity's needs.

(a) *Identification information.* The contracting activity shall prescribe the information necessary for readily identifying a planned acquisition. The information may include items such as acquisition planning document number, request for contract number, public law, program or project officer, etc.

(b) *Programmatic considerations.* (1) *Description of the project/supplies/services.* Include a brief description of the proposed project/supplies/services. Discuss all anticipated future requirements related to the acquisition. Discuss any past, present or future interrelated projects.

(2) *Project funding.* Include the summary of funds expected to be obligated for the entire project by fiscal years and phases. Include expenditures for previous years. Discuss the probability of obtaining future years funding and/or what specific managerial action can be taken to insure future funding (if applicable).

(3) *Background and acquisition history.* Provide a brief factual summary of the technical and contractual history of the supplies/services being acquired.

(4) *Related projects, efforts undertaken to avoid duplication of effort.* Discuss efforts made to determine if existing projects, supplies or materials will satisfy the requirement. Include any related in-house efforts, searches, and clearinghouse reviews made to avoid duplication of effort.

(5) *Need for project/supplies/services.* Discuss rationale for deciding on the need for the project/supplies/services.

(6) *Special program clearances or approvals.* Review 307.105-2 to determine which special program clearances or approvals are required. Specify clearances or approvals applicable to this acquisition.

(7) *Phasing.* Briefly describe discrete tasks or stages of accomplishment which could be susceptible to phasing. Describe criteria for evaluation of performance of each phase before proceeding to the next. (See 307.105-3(c)(3) for a discussion on phasing.)

(8) *Government furnished material/facilities.* Indicate material and facilities that will be furnished to the contractor and any associated problems which may be encountered. Discuss possible inequities which may arise in furnishing the materials or facilities. Discuss screening efforts for availability through GSA excess property schedules.

(9) *Discussion of project risk.* Provide a discussion of major areas of project risk including technical, cost, and schedule risk. Describe what efforts are planned to reduce risk. If an acquisition, which is planned to be awarded using other than full and open competition represents a significant portion of a proposed contractor's business, discuss the impact on technical capability, realism of schedule, changes in contractor workload and related cost impact.

(10) *Reporting/delivery requirements.* Describe the basis for establishing the delivery/reporting requirements and include the anticipated deliverables and time(s) for delivery.

(11) *Replication, dissemination, or use of the results.* Discuss anticipated replication, dissemination, or use of the results. Describe user audience and their expected use. Include a description of the delivery system.

(12) *Data, data rights, patents, copyrights.* Discuss data to be developed. Specify data to be delivered and data to remain in the contractor's possession. Discuss how the data is to be used, maintained, disclosed and disposed of by the contractor. Discuss data subject to the Privacy Act or Confidentiality of Information clause. Discuss data to be delivered with limit-

ed rights, data where title would not vest in the Government, and anticipated copyrights or patents. Discuss whether or not the data will permit any follow-on acquisitions to be competitive.

(13) *Post-award administration and monitoring.* Detail milestones that require periodic evaluation of the contractor's progress. Discuss any formal management systems to be used to monitor the contractor. Discuss plans for post-award conference and site visits. Delineate the timing of the periodic status reports.

(14) *Technical evaluation plans.* Discuss the plans for technical evaluation of the proposal. Discuss whether non-Federal technical evaluators will review the proposals. Discuss potential conflict of interest situations.

(c) *Acquisition approach.* (1) *Proposed sources.* Include sources or categories of sources (if apparent). Address the pertinent areas stated in FAR 7.105(b)(2).

(2) *Contract type.* Provide the rationale for recommendation of contract type.

(3) *Socioeconomic programs.* Discuss preliminary liaison with the Small and Disadvantaged Business Utilization Specialist for review to determine requirements susceptible for the various socioeconomic acquisition programs; i.e., small business, disadvantaged business, or labor surplus area set-asides.

(4) *Other considerations, as applicable.* Discuss special contract clauses and proposed HHSAR deviations, if required. Discuss circumstances such as the effect of a protest on a previous acquisition to this acquisition, special public law or regulatory requirements which place restrictions on this acquisition, and use of a special type of synopsis. Address planned preproposal conference, preaward survey and preaward site visits.

(d) *Planning for the acquisition cycle.* (1) *Scheduling considerations.* The project officer and the contract negotiator shall establish realistic planned dates which meet the program needs for award to assure timely delivery or completion of the project. The following factors should be considered in planning realistic dates:

(i) Individual project officer and contract negotiator workloads;

(ii) Planned, extended absences from the office; and

(iii) Schedules are in consonance with established office goals for overall orderly and balanced workloads.

(2) *Acquisition planning schedule.* The following acquisition planning schedule should be included in all plans to the extent the items are significant or appropriate to the acquisition. Additional items may be added as appropriate.

ACQUISITION PLANNING SCHEDULE

Actions and Date

Advance or sources sought synopsis released
Advance or sources sought synopsis closed
Synopsis evaluation received
Request for contract received
Special program approvals received
Synopsis publicizing proposed acquisition released
Request for proposal released
Preproposal conference conducted
Proposals received
Technical evaluation received
Cost advisory or audit report received
Equal opportunity clearance obtained
Prenegotiation conference conducted
Negotiation completed
Contract document prepared
Contract approval completed
Contract released
Award

(e) *Approvals.* All acquisition planning documents shall be signed by the project officer and the contract negotiator. Acquisition planning documents for acquisitions estimated to be between $100,000 and $1,000,000 shall be approved by the contracting officer. Acquisition planning documents for acquisitions estimated to be in excess of $1 million shall be approved by the principal official responsible for acquisition or his/her designee. The designated official shall be in a position no lower than the level above the contracting officer. One copy of all acquisition planning documents shall be filed with the principal official responsible for acquisition or the designated official for planning purposes. The original acquisition planning document shall be retained in the contract file.

[49 FR 13969, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

307.105-2 Special program clearances or approvals.

The following special program clearances or approvals should be reviewed for applicability to each planned acquisition. The ones which are applicable should be addressed in the acquisition planning document and immediate programmatic action should be initiated to obtain the necessary clearances or approvals.

(a) *Clearances or approvals required to be completed and submitted with the request for contract (RFC).*—(1) *Automatic data processing.* All proposed acquisitions of automatic data processing hardware, software packages, and services, as well as telecommunications equipment, which exceed the dollar thresholds stated in Chapter 4-10 of the HHS ADP Systems Manual must be reviewed and approved by the Office of Management Analysis and Systems (OMAS), OASMB-OS. (See HHS ADP Systems Manual, Chapter 4-10; Title 41 CFR Chapter 150; and Subpart 339.70.)

(2) *ADP systems security.* All ADP systems regardless of dollar amount are required to have a Certification of ADP Systems Security Adequacy signed by the ADP system manager and the cognizant ADP systems security officer. (See ADP Systems Manual, Part 6—ADP Systems Security; OMB Circular No. A-71, Transmittal Memorandum No. 1; and Subpart 339.70.)

(3) *Consultant services.* The Assistant Secretary for Management and Budget is responsible for review and approval of all nonevaluation consultant service contracts of $250,000 or more. (See General Administration Manual Chapter 8-15.)

(4) *Evaluation contracts.* All evaluation projects except evaluability assessments under $135,000 will be reviewed and approved by the Assistant Secretary for Planning and Evaluation (ASPE). Evaluability assessments under $135,000 will be approved by the heads of the OPDIVs or the regional directors. Evaluability assessment is defined in the annual guidance for Evaluation, Research, and Statistical Activities issued by ASPE.

(5) *Commercial activities.* (OMB Circular No. A-76) A request for contract (RFC) must contain a statement as to whether the proposed solicitation is or is not to be used as part of an OMB Circular No. A-76 cost comparison. (See General Administrative Manual (GAM) Chapter 18-10; FAR Subpart 7.3, Subpart 307.3; OMB Circular No. A-76.)

(6) *Paid advertising.* Paid advertisements, notices or contract proposals to be published in newspapers and periodicals may be authorized by the contracting officer. (See FAR Subpart 5.5, Subpart 305.5; Title 7, Chapter 5-25.2, and the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.)

(7) *Printing.* The acquisition of printing by contract is prohibited unless it is authorized by the Joint Committee on Printing of the U.S. Congress. Procedures to be followed are contained in the "Government Printing and Binding Regulations" and the HHS Printing Management Manual and FAR Subpart 8.8.

(8) *Fraud, abuse and waste.* All proposed acquisitions that concern the subjects of fraud, abuse and waste must be reviewed and approved by the Inspector General or Deputy Inspector General, and written approval from either must be included in the request for contract.

(9) *Paperwork Reduction Act.* Under the Paperwork Reduction Act of 1980 (Pub. L. 96-511), a Federal agency shall not collect information or sponsor the collection of information from ten or more persons other than Federal employees unless, in advance, the agency has submitted Standard Form 83, Clearance Request and Notice of Action, to the Director of the Office of Management and Budget, and the Director has approved the proposed collection of information. Procedures for obtaining approval are contained in Title 5 CFR Part 1320 and General Administration Manual Chapter 10-20.

(10) *Contracts with federal employees.* Contracts between the Government and Government employees or between the Government and organizations which are substantially owned

or controlled by Government employees may not knowingly be entered into, except for the most compelling reasons (see FAR Subpart 3.6). Authority to enter into a contract with a Government employee or an organization substantially owned or controlled by a Government employee must be approved prior to award of the contract by either the Assistant Secretary for Management and Budget, the head of the OPDIV, or the regional director, or their designees. (See 45 CFR Part 73 and HHS Standards of Conduct.)

(11) *Classified contracts.* Projects involving national security information must be coordinated with the Division of Security and Protection, Office of Investigation for guidance and approval as required by the HHS Security Manual.

(12) *Publications.* All projects which will result in contracts in excess of $2,500 and which include publications require review and approval by the Office of the Assistant Secretary for Public Affairs (OASPA). Form HHS-615, Publication Planning and Clearance Request, should be forwarded to OASPA through the OPDIV public affairs officer. Publications are defined in the chapter on publications in the Public Affairs Management Manual.

(13) *Public affairs services.* Projects for the acquisition of public affairs services in excess of $5,000 shall be submitted to the Office of the Assistant Secretary for Public Affairs (OASPA) for review and approval on Form HHS-524B, Request for Public Affairs Service Contract.

(14) *Audiovisual (videotape and motion picture production).* Any proposed acquisition of an audiovisual production requires the submission of a Standard Form 282, Mandatory Title Check, to the National Audiovisual Center (NAC). When the results of this title check have been reviewed by the project office and if a determination is made that existing materials are not adequate to fulfill the requirement, a statement to that effect shall be prepared by the project office. For acquisitions in excess of $5,000, a copy of that statement, together with a Standard Form 202, Federal Audiovisual Production Report, and Form HHS-524A, Request for Audiovisual Material, shall be submitted through the OPDIV public affairs officer to the Office of the Assistant Secretary for Public Affairs (OASPA) for review and approval. Following approval by OASPA, the SF 202 and the statement explaining why existing materials are insufficient will be forwarded to NAC by OASPA. An approved copy of the Form HHS-524A will be returned to the OPDIV for transmission to the contract negotiator. All audiovisuals are required to be acquired under the Government-wide Contracting System for Motion Picture and Videotape Productions, unless they are included in the exceptions to the mandatory use of the uniform system. (See the Executive Agent for Government-Wide Contracting System for Audiovisual Productions' March 21, 1980, memorandum on Implementation of OFPP Policy Letter No. 79-4, November 28, 1979, Contracting for Motion Picture and Videotape Productions; HHS General Administration Manual Chapter 1-121.)

(15) *Privacy Act (Pub. L. 93-579.)* Whenever the Department contracts for the design, development, operation, or maintenance of a system of records on individuals on behalf of the Department in order to accomplish a departmental function, the Privacy Act is applicable. The program official, after consultation with the activity's Privacy Act Coordinator and the Office of General Counsel as necessary shall include a statement in the request for contract as to the applicability of the Act. Whenever an acquisition is subject to the Act, the program official prepares a "system notice" and has it published in the FEDERAL REGISTER. (See HHS Privacy Act regulation, 45 CFR 5b; FAR Subpart 24.1 and Subpart 324.1.)

(b) *Clearances or approvals required to be completed prior to contract award.* All foreign research contract projects to be conducted in a foreign country and financed by HHS funds (U.S. dollars) must have clearance by the Department of State with respect to consistency with foreign policy objectives. This clearance should be obtained prior to negotiation. Procedures for obtaining this clearance are set forth in the HHS General Administration Manual, Chapter 20-60.

[49 FR 13969, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984; 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 53 FR 15563, May 2, 1988]

307.105-3 Specification, purchase description and statement of work.

One of the most important parts of a contract is the description of the work to be done. The description of that work may be in the form of a specification, purchase description or statement of work. A brief reference to specifications and purchase descriptions is provided, although the nature of the work performed in this Department usually results in the development of work statements. The development of the acquisition planning document should result in sufficient information to readily develop the description of work, usually in the form of a statement of work.

(a) *Specification.* Specification is defined in FAR 10.001. Use of the specification is primarily limited to supply or service contracts where the material end item or service to be delivered is well defined by the Government.

(b) *Purchase description.* FAR 10.001 also contains the definition of purchase description.

(c) *Statement of work.*—(1) *General.* A statement of work differs from a specification and purchase description primarily in that it describes work or services to be performed in reaching an end result rather than a detailed, well defined description or specification of the end product. The statement of work may enumerate or describe the methods (statistical, clinical, laboratory, etc.) that will be used. However, it is preferable for the offeror to propose the method of performing the work. The statement of work should specify the desired results, functions, or end items without telling the offeror what has to be done to accomplish those results unless the method of performance is critical or required for the successful performance of the contract. The statement of work should be clear and concise and must completely define the responsibilities of the Government and the contractor. The statement of work should be worded so as to make more than one interpretation virtually impossible because it has to be read and interpreted by persons of varied backgrounds, such as attorneys, contracting personnel, cost estimators, accountants, scientists, sociologists, educators, functional specialists, etc. If the statement of work does not state exactly what is wanted, or does not state it precisely, it will generate many contract management problems for both the project officer and the contracting officer. Ambiguous statements of work can create unsatisfactory performance, delays, and disputes, and can result in higher costs.

(2) *Term (level of effort) vs. completion work statement.* Careful distinctions must be drawn between term (level of effort) statements of work, which essentially require the furnishing of technical effort and a report thereof, and completion type work statements, which often require development of tangible end items designed to meet specific performance characteristics.

(i) *Term or level of effort.* A term or level of effort type statement of work is appropriate to research where one seeks to discover the feasibility of later development, or to gather general information. A term or level of effort type statement of work may only specify that some number of labor-hours be expended on a particular course of research, or that a certain number of tests be run, without reference to any intended conclusion.

(ii) *Completion.* A completion type statement of work is appropriate to development work where the feasibility of producing an end item is already known. A completion type statement of work may describe what is to be achieved through the contracted effort, such as the development of new methods, new end items, or other tangible results.

(3) *Phasing.* Individual research, development, or demonstration projects frequently lie well beyond the present state of the art and entail procedures and techniques of great complexity and difficulty. Under these circumstances, a contractor, no matter how carefully selected, may be unable to deliver the desired result. Moreover,

the job of evaluating the contractor's progress is often difficult. Such a contract is frequently phased and often divided into stages of accomplishment, each of which must be completed and approved before the contractor may proceed to the next. Phasing makes it necessary to develop methods and controls, including reporting requirements for each phase of the contract and criteria for evaluation of the reports submitted, that will provide, at the earliest possible time, appropriate data for making decisions relative to all phases. A phased contract may include stages of accomplishment such as research, development, and demonstration. Within each phase, there may be a number of tasks which should be included in the statement of work. When phases of work can be identified, the statement of work will provide for phasing and the request for proposals will require the submission of proposed costs by phases. The resultant contract will reflect costs by phases, require the contractor to identify incurred costs by phases, establish delivery schedules by phases, and require the written acceptance of each phase. The provisions of the Limitation of Cost clause shall apply to the estimated cost of each phase. Contractors shall not be allowed to incur costs for phases which are dependent upon successful completion of earlier phases until written acceptance of the prior work is obtained from the contracting officer.

(4) *Elements of the statement of work.* The elements of the statement of work will vary with the objective, complexity, size, and nature of the acquisition. In general, it should cover the following matters as appropriate.

(i) *A general description of the required objectives and desired results.* Initially, a broad, nontechnical statement of the nature of the work to be performed. This should summarize the actions to be performed by the contractor and the results that the Government expects.

(ii) *Background information helpful to a clear understanding of the requirements and how they evolved.* Include a brief historical summary as appropriate. Include pertinent legislative history, related contracts or grants, and the relationship to overall program objectives.

(iii) *A detailed description of the technical requirements.* A comprehensive description of the work to be performed to provide whatever details are necessary for prospective offerors to submit meaningful proposals.

(iv) *Subordinate tasks or types of work.* A listing of the various tasks or types of work (it may be desirable in some cases to indicate that this is not all-inclusive). The degree of task breakout is directly dependent on the size and complexity of the work to be performed and the logical groupings. A single cohesive task should not be broken out merely to conform to a format. Indicate whether the tasks are sequential or concurrent for offeror planning purposes.

(v) *Phasing.* When phasing is applicable, describe in detail the work or effort required in each phase and the criteria for determining whether the next phase will take place. If one or more phases contain subordinate tasks or types of work, the preceding information in paragraph (c)(4) (iv) may be incorporated into the part.

(vi) *Reference material.* All reference material to be used in the conduct of the project, such as technical publications, reports, specifications, architect or engineering drawings, etc., that tell how the work is to be carried out must be identified. Applicability should be explained, and a statement made as to where the material can be obtained.

(vii) *Level of effort.* When a level of effort is required, the number and type of personnel required should be stated. If known, the type and degree of expertise should be specified.

(viii) *Special requirements* (as applicable). An unusual or special contractual requirement, which would impact on contract performance, should be included as a separate section. Such items could include required place(s) of performance or unusual travel requirements. Clearance requirements, such as forms clearance, should be addressed.

(ix) *Deliverables reporting requirements.* All deliverables and/or reports must be clearly and completely described. For example, in a Final Study Report it is important to indicate what areas the report should cover and the criteria for use in accepting the final report to determine if the contract objectives have been satisfied. It is important to require the preparation and submission of progress reports (administrative, technical and financial) to reflect contractor certification of satisfactory progress. If possible, the reports should be coordinated in such a manner as to provide a correlation between costs incurred and the state of completion. All delivery and reporting requirements shall include the quantities, the place of delivery, and time of delivery.

307.170 Program training requirements.

(a) Chapter 8-95 of the General Administration Manual (GAM) addresses the general parameters for acquisition planning as stated in 307.104. In conjunction with the principles of proper acquisition planning, the Department has established training courses for program officials to promote expedient program management in the planning and other pertinent aspects of the acquisition process. Chapter 8-96 of the GAM sets forth specific training requirements for program officials as follows:

(1) All program personnel selected to serve as project officer for an HHS contract shall have successfully completed either the Department's basic or advanced "Program Officials Guide to Contracting" training course, or an equivalent course (see paragraph (b), below).

(2) At least fifty percent of the HHS program personnel performing the function of technical proposal evaluator on a technical evaluation team or panel for any competitively solicited HHS contract shall have successfully completed the basic "Program Officials Guide to Contracting" training course, or an equivalent course (see paragraph (b), below). This requirement applies to the initial technical proposal evaluation and any subsequent technical evaluations that may be required.

(b) Determination of course equivalency shall be made by the principal official responsible for acquisition. The contracting officer is responsible for ensuring that the project officer and technical proposal evaluators have successfully completed the required training discussed in 307.170-2.

307.170-1 Policy exceptions.

(a) *Small contracting activities.* (1) Program personnel designated to serve as project officers and technical proposal evaluators for contracts which originate in offices having a mission which only incidentally and infrequently involves the generation of contract requirements (i.e., normally less than three contract requirements per fiscal year and in an amount not exceeding $100,000 per contract) are not required to have completed the prerequisite training course, although it is recommended.

(2) As a substitute for the training, contracting officers servicing these program offices are required to ensure, as a minimum, that program personnel designated to serve as project officers and technical proposal evaluators have read and studied the HHS publication, "The Negotiated Contracting Process—A Guide for Project Officers," and fully understand their responsibilities. The contracting officer shall require these program personnel to furnish written certification that they have fulfilled this requirement prior to discharging the duties of project officer or technical proposal evaluator.

(b) *Urgent requirements.* In the event there is an urgent requirement for a specific individual to serve as a project officer and that individual has not successfully completed the prerequisite training course, the principal official responsible for acquisition may waive the training requirement and authorize the individual to perform the project duties, provided that:

(1) The individual first meets with the cognizant contracting officer to review the HHS publication, "The Negotiated Contracting Process—A Guide for Project Officers," and to discuss the important aspects of the contracting—program office relationship as appropriate to the circumstances; and

(2) The individual attends the next scheduled basic or advanced training course, as appropriate.

307.170-2 Training course prerequisites.

(a) *Project officers.* (1) Newly appointed project officers, and project officers with less than three years experience and no previous related training, are required to take the basic training course, "Program Officials Guide to Contracting." (The grade level for project officers attending the course should be GS-7 and above).

(2) Project officers with more than three years experience, and project officers with less than three years experience who have successfully completed the basic course, are qualified to take the advanced "Program Officials Guide to Contracting" training course.

(b) *Technical proposal evaluators.* Technical proposal evaluators, regardless of experience, are required to take the basic course. Upon successful completion of the basic course, it is recommended that they take the advance course.

Subpart 307.3—Contractor Versus Government Performance

307.302 General.

(a) GAM Chapter 18-10, Commercial-Industrial Activities of the Department of Health and Human Services Providing Products or Services for Government Use, assigns responsibilities for making method-of-performance decisions (contract vs. in-house performance) to various management levels within the Department depending on the dollar amount of capital investment or annual operating costs. It also requires that each operating division (OPDIV), staff division (STAFFDIV) and regional office (RO) designate a "Commercial-Industrial Control Officer" (CICO) to be responsible for ensuring compliance with the requirements of the Chapter.

(d) Besides contracts with annual operating costs under $100,000, contracts under an authorized acquisition set-aside for small business or labor surplus area concerns and contracts made pursuant to section 8(a) of the Small Business Act are exempted from the requirements of FAR Subpart 7.3, GAM Chapter 18-10, and OMB Circular No. A-76.

307.303 Determining availability of private commercial sources.

In accordance with the provisions of GAM Chapter 18-10, OPDIVs, STAFFDIVs, and ROs and must prepare and maintain a complete inventory of all individual commercial or industrial activities, including those conducted under contracts in excess of $100,000 annually. They must also conduct periodic reviews of each activity and contract in the inventory to determine if the existing performance, in-house or by contract, continues to be in accordance with the policy guidelines of GAM Chapter 18-10.

307.304 Procedures.

Contracting officers shall ensure that no acquisition action involving a commercial-industrial activity is initiated unless it is in compliance with the requirements of GAM Chapter 18-10. The contracting officer must check each request for contract expected to result in a contract in excess of $100,000 to ensure that it contains a statement as to whether the proposed contract is or is not subject to review under GAM Chapter 18-10 requirements. If the contracting officer has any questions regarding the determination of applicability or nonapplicability, or if the required statement is missing, the program office submitting the request for contract should be contacted and the situation rectified. If the issue cannot be resolved with the program office, the contracting officer shall refer the matter to the CICO for a final determination. The principal official responsible for acquisition is responsible for ensuring that contracting activities are in full compliance with FAR Subpart 7.3.

307.307 Appeals.

The review and appeals procedures discussed in FAR 7.307 are addressed in GAM Chapter 18-10.

Subpart 307.70—Considerations in Selecting an Award Instrument

307.7000 Scope of subpart.

This subpart provides guidance on the appropriate selection of award instruments consistent with the Federal

Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224) and the OMB implementation of the Act as published in the FEDERAL REGISTER on August 18, 1978 (41 FR 36860). This subpart addresses acquisition relationships where the award instrument is the contract, and assistance relationships where the award instrument is either a grant or cooperative agreement.

307.7001 Applicability.

This subpart applies to the choice of award instrument—contract, grant, or cooperative agreement—for all program and individual transactions, except where specifically prohibited by law.

307.7002 Purpose.

This subpart provides guidance to assist in the determination of whether to use the acquisition or assistance process to fulfill program needs. The distinction between, and use of, grants and cooperative agreements is not discussed in detail. Detailed guidance may be found in Chapter 1-02 of the Grants Administration Manual.

307.7003 Distinction between acquisition and assistance.

(a) The Federal Grant and Cooperative Agreement Act of 1977 requires the use of contracts to acquire property or services for the direct benefit or use of the Government and grants or cooperative agreements to transfer money, property, services, or anything of value to recipients to accomplish a public purpose of support or stimulation authorized by Federal statute.

(b) A contract is to be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever:

(1) The principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or

(2) The Department determines in a specific instance that the use of a type of contract is appropriate. That is, it is determined in a certain situation that specific needs can be satisfied best by using the acquisition process. However, this authority does not permit circumventing the criteria for use of acquisition or assistance instruments. Use of this authority is restricted to extraordinary circumstances and only with the prior approval of the Deputy Assistant Secretary for Procurement, Assistance and Logistics.

(c) A grant or cooperative agreement is to be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute.

(1) A grant is the legal instrument to be used when no substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity.

(2) A cooperative agreement is the legal instrument to be used when substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity.

(d) As a general rule, contracts are to be used for the following purposes:

(1) Evaluation (including research of an evaluative nature) of the performance of Government programs or projects or grantee activity initiated by the funding agency for its direct benefit or use.

(2) Technical assistance rendered to the Government, or on behalf of the Government, to any third party, including those receiving grants or cooperative agreements.

(3) Surveys, studies, and research which provide specific information desired by the Government for its direct activities, or for dissemination to the public.

(4) Consulting services or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(5) Training projects where the Government selects the individuals or specific groups whose members are to be trained or specifies the content of the curriculum (not applicable to fellowship awards).

(6) Planning for Government use.

(7) Production of publications or audiovisual materials required primar-

ily for the conduct of the direct operations of the Government.

(8) Design or development of items for Government use or pursuant to agency definition or specifications.

(9) Conferences conducted on behalf of the Government.

(10) Generation of management information or other data for Government use.

(e) As a general rule, grants or cooperative agreements are to be used for the following purposes:

(1) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing the assistance.

(2) Financial assistance (stimulation or support) to a specific program activity eligible for assistance under specific legislation authorizing the assistance.

307.7004 Procedures.

(a) OPDIV, agency, and regional office program officials should use existing budget and program planning procedures to propose new activities and major changes in ongoing programs. It is the responsibility of these program officials to meet with the principal official responsible for acquisition and the principal grants management official, or their designees, to distinguish the relationships and determine whether award is to be made through the acquisition process or assistance process. This determination should be made prior to the time when the annual acquisition plan is reviewed and approved so that the plan will reflect all known proposed contract actions. The cognizant contracting officer will confirm the appropriateness of the use of the contract instrument when reviewing the request for contract.

(b) Shifts from one award instrument to another must be fully documented in the appropriate files to show a fundamental change in program purpose that unequivocably justifies the rationale for the shift.

(c) OPDIVs, agencies, and regional offices must ensure that the choice of instrument is determined in accordance with the Federal Grant and Cooperative Agreement Act of 1977 and applicable departmental policies. If, however, there are major individual transactions or programs which contain elements of both acquisition and assistance in such a way that they cannot be characterized as having a principal purpose of one or the other, guidance should be obtained from the Deputy Assistant Secretary for Procurement, Assistance and Logistics, through normal channels, before proceeding with a determination.

(d) Any public notice, program announcement, solicitation, or request for applications or proposals must indicate whether the intended relationship will be one of acquisition or assistance and specify the award instrument to be used.

Subpart 307.71—Phase II Advance Acquisition Planning (Scheduling)

307.7101 Background.

(a) Failure to properly plan individual acquisitions and failure to schedule the overall acquisition workload of an office, agency, or OPDIV tends to result in an inordinate percentage of contract awards being made in the closing weeks and even days of the fiscal year. This phenomenon, variously identified as "The September Rush", "Hurry-up Spending", "End-of-Year Purchasing", and "Year-End Spending Abuses", in turn fosters rushed, other than full and open competition, inadequately documented, and potentially wasteful acquisitions. Excessive year-end spending also invites increased intervention and/or scrutiny from Congress, the Office of Management and Budget, and the media. The end of the fiscal year, however, is usually too late to take corrective actions that are effective without being unduly damaging to necessary programs. The key is to begin advance acquisition planning far earlier.

(b) To avoid the historic pattern of wasteful and unnecessary year-end spending, the Department introduced the Acquisition Planning Initiative by Under Secretarial memorandum of February 19, 1980, Subject: New Procedures to Improve Planning and Scheduling of Contract Awards and Curb Last-Minute Year-End Procurement Spending. Phase II of this initiative, beginning with Fiscal Year 1981, established the present acquisition planning mechanism. Basic guidance on the Phase II mechanism is contained in the ASMB memorandum of March 28, 1980, Subject: Phase II of (Fiscal Year 1981) Procurement Planning Initiative—Guidelines for Program Funding Milestones. For the Public Health Service, the above guidance is supplemented by the ASMB memorandum of April 21, 1982, Subject: Phase II Annual Procurement Planning.

[49 FR 13969, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

307.7102 Accountability and responsibility.

Phase II is a Department-wide monitoring and accountability system that requires early planning of acquisition requirements down to the individual project level. The Phase II mechanism includes the following:

(a) Accountability lies with the OPDIV and STAFFDIV heads who are required to coordinate overall schedules which plot the planned distribution of RFC deliveries and contract awards over an eighteen-month timeline extending to fiscal year-end.

(b) Each OPDIV and STAFFDIV retains the flexibility to schedule individual RFC deliveries and contract awards as desired, so long as the overall schedule presents a relatively even distribution of contract awards and workload across the fiscal year.

(c) The schedules are updated quarterly to compare actual versus planned progress and, when necessary, to revise the schedules for the remainder of the fiscal year.

(d) Project officers are responsible for initiating the project planning by coordinating with contracting activities prior to RFC preparation, and taking the lead in developing acquisition plans that establish the date(s) for delivering complete RFC packages to the contracting activity, and that establish the planned award dates for individual projects.

(e) The Office of Procurement and Logistics Policy in the Office of Procurement, Assistance and Logistics monitors the OPDIV and STAFFDIV Phase II plans throughout the year to assure that an even distribution of awards, dollar obligations, and workload is maintained.

[49 FR 13969, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

307.7103 Purpose.

The Phase II Advance Acquisition Planning mechanism serves to avoid excessive year-end spending and distributes the contract workload as evenly as possible over the fiscal year, and provides a mechanism for planning at the program/acquisition operational level and a management tool for monitoring at the program, OPDIV, and departmental levels.

307.7104 Contracting activity actions.

The contracting activity shall take the following actions:

(a) Advise program and staff personnel of their responsibilities to ensure that:

(1) Year-end acquisitions of unplanned items are not entered into to use available balances of expiring appropriations (which would otherwise revert to the Treasury);

(2) Orders for supplies, materials, and equipment are kept to the minimum needed to carry on approved programs;

(3) Inventories are held to normal levels; and

(4) New contracts for future services and payments to contractors are made only in accordance with established plans.

(b) Determine closing dates for purchases to be made from appropriations ending on September 30.

(c) Expedite the preparation and processing of determinations and findings which require the approval of the Assistant Secretary for Management and Budget or the OPDIV head.

PART 309—CONTRACTOR QUALIFICATIONS

Subpart 309.1—Responsible Prospective Contractors

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13976, Apr. 9, 1984, unless otherwise noted.

Subpart 309.1—Responsible Prospective Contractors

309.104 Standards.

309.104-1 General standards.

(a) In determining the adequacy of a prospective contractor's financial resources for the performance of the proposed contract, particular attention shall be given to the ability of the contractor to discharge its full financial responsibility for charges and losses of Government-furnished material, when the contractor has responsibility for such material.

(e) The prospective contractor must have an established system of accounting and financial controls which are determined by the contracting officer to be adequate to permit the effective administration of the type of contract proposed, particularly if under its terms the costs incurred are a factor in determining the amount payable under the contract, or if advance or progress payments are requested.

309.105 Procedures.

309.105-1 Obtaining information.

(b)(2)(ii) To ensure that a prospective contractor has the necessary accounting and operational controls (see 309.104-1(e)), a written determination must be made by the contracting officer that the prospective contractor has an adequate accounting system for determining costs applicable to the contract and a billing system that satisfies the contractual payment provisions. The determination must explain the basis for this judgment.

(A) When dealing with high risk organizations, i.e., new organizations, those with known problems, and those with accounting system deficiencies, the contracting officer shall use every reasonable means available to protect the Government from the improper expenditure of Federal funds. Actions should include at least one of the following: preaward and postaward audits; direct identification of cost with deliverables; billing by contract phases or tasks; fidelity bonding or other guarantees by the parent company or principals of the organization; increased scrutiny of vouchers and financial reports; and frequent site visits to verify the incurrence of specific costs and the relationship of technical progress with the amount billed.

(B) If a prospective contractor's accounting or billing system (or both) is determined to be inadequate, corrective action must be taken before that organization is awarded a contract. When corrective action cannot be completed until after the award and the contracting officer determines that the award must be made, the contracting officer shall consult with the cognizant cost advisor and take the appropriate actions set forth in FAR 16.104 to ensure that the Government's interests will be protected and the contract will be adequately costed and administered. Awards made under the preceding condition must be approved in writing by the principal official responsible for acquisition.

Subpart 309.4—Debarment, Suspension, and Ineligibility

SOURCE: 50 FR 7780, Feb. 26, 1985, unless otherwise noted.

309.403 Definitions.

"Debarring official" means the Assistant Secretary for Management and Budget, or designee.

"Initiating official" means the contracting officer, or the head of the contracting activity, or the Deputy Assistant Secretary for Procurement, Assistance and Logistics, or the Inspector General.

"Suspending official" means the Assistant Secretary for Management and Budget, or designee.

309.404 Consolidated list of debarred, suspended and ineligible contractors.

(c) The Office of Procurement, [illegible]sistance and Logistics (OPAL) shall perform the actions required by FAR 9.404(c)(1)-(3).

(4) OPAL shall maintain all documentation submitted by the initiating official recommending the debarment or suspension action and all correspondence and other pertinent documentation generated during the OPAL review.

309.405 Effect of listing.

(a) The head of the contracting activity may, with the concurrence of the debarring or suspending official, make the determinations referenced in FAR 9.405(a), regarding contracts for their respective activities.

(1) If a contracting officer considers it necessary to award a contract, or consent to a subcontract with a debarred or suspended contractor, the contracting officer shall prepare a determination, including all pertinent documentation, and submit it through acquisition channels to the head of the contracting activity. The documentation must include the date by which approval is required and a compelling reason for the proposed action. Some examples of circumstances that may constitute a compelling reason for the award to, or consent to a subcontract with, a debarred or suspended contractor include:

(i) The property or services to be acquired are available only from the listed contractor;

(ii) The urgency of the requirement dictates that the Department deal with the listed contractor; or

(iii) There are other compelling reasons which require business dealings with the listed contractor.

(2) If the head of the contracting activity decides to approve the requested action, he/she shall request the concurrence of the debarring or suspending official and, if given, shall, in writing, inform the contracting officer of the decision within the required time period.

309.405-1 Continuation of current contracts.

(a) Notwithstanding the debarment or suspension of a contractor, contracting officers may continue contracts or subcontracts in existence at the time the contractor was debarred or suspended, unless the head of the contracting activity or debarring or suspending official directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by the awarding activity's contracting and technical personnel. The contracting officer shall coordinate any termination with the Office of the General Counsel to ensure the propriety of the proposed action.

(b) Contracting officers shall not renew the current contracts of debarred or suspended contractors, or otherwise extend their duration, unless the head of the contracting activity determines to do so, with the concurrence of the debarring or suspending official. The contracting officer shall prepare a determination meeting the requirements of 309.405(a) and submit it, through acquisition channels, to the head of the contracting activity. If the head of the contracting activity agrees with the determination, he/she shall obtain the concurrence of the debarring or suspending official.

309.406 Debarment.

309.406-3 Procedures.

(a) *Investigation and referral.* Whenever an apparent cause for debarment becomes known to an initiating official, that person shall prepare a report incorporating the information required by 309.470-2, if known, and forward it through appropriate channels, with a written recommendation, to the debarring official. Contracting officers shall forward their reports in accordance with 309.470-1. The debarring official shall initiate an investigation through such means as he/she deems appropriate.

(b) *Decisionmaking process.* The debarring official shall review the results of the investigation, if any, and make a written determination whether or not debarment procedures are to be commenced. A copy of the determination shall be promptly sent through appropriate channels to the initiating official, and the contracting officer, if necessary. If the debarring official determines to commence debarment procedures, he/she shall, after consultation with the Office of the General Counsel, notify the contractor in accordance with FAR 9.406-3(c). If the proposed action is not based on a conviction or judgment and the contractor's submission in response to the notice raises a genuine dispute over facts material to the proposed debarment, the debarring official shall arrange for fact-finding hearings and take the necessary actions specified in FAR 9.406-3(b)(2). The debarring official shall also ensure that written findings of fact are prepared, and shall base the debarment decision on the facts as found, after considering information and argument submitted by the contractor and any other information in the administrative record. The Office of the General Counsel shall represent the Department at any fact-finding hearing and may present witnesses for HHS and question any witnesses presented by the contractor.

309.407 Suspension.

309.407-3 Procedures.

(a) *Investigation and referral.* Whenever an apparent cause for suspension becomes known to an initiating official, that person shall prepare a report incorporating the information required by 309.470-2, if known, and forward it through appropriate channels, with a written recommendation, to the suspending official. Contracting officers shall forward their reports in accordance with 309.470-1. The suspending official shall initiate an investigation through such means as he/she deems appropriate.

(b) *Decisionmaking process.* The suspending official shall review the results of the investigation, if any, and make a written determination whether or not suspension should be imposed. A copy of this determination shall be promptly sent through appropriate channels to the initiating official and the contracting officer, if necessary. If the suspending official determines to impose suspension, he/she shall, after consultation with the Office of the General Counsel, notify the contractor in accordance with FAR 9.407-3(c). If the action is not based on an indictment and, subject to the provisions of FAR 9.407-3(b)(2), the contractor's submission in response to the notice raises a genuine dispute over facts material to the suspension, the suspending official shall, after suspension has been imposed, arrange for fact-finding hearings and take the necessary actions specified in FAR 9.407-3(b)(2).

309.470 Reporting of suspected causes for debarment or suspension, or the taking of evasive actions.

309.470-1 Situations where reports are required.

A report incorporating the information required by 309.470-2 shall be forwarded, in duplicate, by the contracting officer through acquisition channels to the OPAL when—

(a) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406-2 or FAR 9.407-2; or

(b) A contractor is suspected of attempting to evade the prohibitions of debarment or suspension imposed under this regulation, or any other comparable regulation, by changes of address, multiple addresses, formation of new companies, or by other devices.

309.470-2 Contents of reports.

Each report prepared under 309.470-1 shall be coordinated with the Office of the General Counsel and shall include the following information, where available:

(a) Name and address of contractor.

(b) Name of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) Description of the contract or contracts concerned, including the contract number, and office identifying numbers or symbols, the amount of each contract, the amount paid the contractor and the amount still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether contract funds have been assigned pursuant to the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, and, if so assigned, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, the amount of such contracts, whether these funds have been assigned pursuant to the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, and the amounts paid or due on such contracts.

(h) A complete summary of all available pertinent evidence.

(i) A recommendation as to the continuation of current contracts.

(j) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate.

(k) The comments and recommendations of the contracting officer and statements regarding whether the contractor should be suspended or debarred, whether any limitations should be applied to such action, and the period of any proposed debarment.

(l) As an enclosure, a copy of the contract(s) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation or a written summary of any information for which documentation is not available.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 313—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 313.1—General

Sec.
313.101 Definitions.
313.104 Procedures.
313.105 Small business—small purchase set-asides.
313.106 Competition and price reasonableness.
313.107 Solicitation and evaluation of quotations.

Subpart 313.2—Blanket Purchase Agreements

313.201 General.
313.204 Purchases under Blanket Purchase Agreements.

Subpart 313.4—Imprest Fund

313.403 Agency responsibilities.

Subpart 313.5—Purchase Orders

313.505 Purchase order and related forms.
313.505-3 Standard Form 44, Purchase Order—Invoice—Voucher.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13977, Apr. 9, 1984, unless otherwise noted.

Subpart 313.1—General

313.101 Definitions.

"Small purchase procedures"

(d) Acquisition of architect-engineer professional services of any dollar amount.

313.104 Procedures.

(i) Small purchase methods are designed to acquire defined, off-the-shelf, standard supplies, equipment, or services which may be awarded on the basis of a fixed price quotation. Small purchase methods should not be used to acquire R & D, complex studies, services, and the like (which require judgmental technical evaluations and involve negotiations) where the award cannot be confidently made on the low price. Where requirements are not suitable for accomplishment using small purchase methods, more formal negotiation methods or sealed bidding should be used.

(j) Small purchases accomplished in accordance with this Part may not be awarded on a cost-reimbursement basis.

(k) Small purchase methods should be used with great prudence for the acquisition of consultants to avoid the increased possibility of using consultants in an improper personal services capacity.

[49 FR 13977, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 53 FR 15563, May 2, 1988]

313.105 Small business—small purchase set-asides.

(d)(2) However, the contracting officer shall consult with the small and disadvantaged business utilization specialist (SADBUS) to determine whether small business sources are known by the SADBUS or may be obtained from the Small Business Administration's Procurement Center Representative, trade associations, or other Federal agencies before determining not to proceed with the small business—small purchase set-aside.

[50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

313.106 Competition and price reasonableness.

(a) *Purchases not over $1,000.* Purchases not over $1,000 are exempt from FAR Subpart 6.3 and Subpart 306.3. However, purchases not over $1,000 shall not be made repetitively from one source except for reasons which clearly and convincingly justify other than full and open competition (see FAR Subpart 6.3).

(b) *Purchases over $1,000.*

(4)(i)(D) Small women-owned business.

(c) *Data to support small purchases over $1,000.*

(2) Purchases in excess of $1,000 up to $25,000 which are made without full and open competition require justification as to why competition was not obtained. The justification, which may

be in the form of a paragraph or paragraphs in the request for contract or requisition, must address the considerations in FAR Subpart 6.3 and Subpart 306.3. The contracting officer may approve or disapprove the justification. Award of the contract or purchase order by the contracting officer shall constitute approval of the justification (see 306.304(a)(1)).

[49 FR 13977, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

313.107 Solicitation and evaluation of quotations.

(d) *Amendments.* (1) If after the issuance of a request for quotations but before the closing date of their receipt, it becomes necessary (i) to make significant changes in the quantity, specifications, or delivery schedule, (ii) to make any change in the closing date, or (iii) to correct a defect or ambiguity, the change shall be accomplished by issuance of an amendment to the request. Requests for quotations using the Standard Form 18 may be amended by letter. Oral requests for quotations may be amended orally.

(2) When it is considered necessary to issue an amendment to a request for quotations, the period of time remaining before closing and the need for extending this period by postponing the time set for closing must be considered. Where only a short time remains before the time set for closing, extension of time may be made by telegram or telephone. This notification should be confirmed in the amendment.

(3) Any information given to one potential quoter concerning a request for quotations shall be furnished promptly to all other potential quoters in an amendment to the request, if the information is necessary to potential quoters in submitting quotations, or if the lack of the information would be prejudicial to uninformed potential quoters.

[49 FR 13977, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984]

Subpart 313.2—Blanket Purchase Agreements

313.201 General.

(e) Each blanket purchase arrangement (BPA) shall be documented by issuance of a contractual instrument which is appropriately numbered.

313.204 Purchases under Blanket Purchase Agreements.

(e) Delivery tickets signed by the Government employee receiving the item or service will be forwarded to the fiscal office or other paying office as designated by the OPDIV. Payment will be made on the basis of the signed delivery tickets and properly itemized invoice. Contracting activities will ensure that established procedures allowing for availability of funds are in effect prior to placement of orders.

Subpart 313.4—Imprest Fund

313.403 Agency responsibilities.

(a) The amount of each imprest fund shall be established on the basis of the estimated monthly payment and the need for replenishment. A review shall be made by the responsible official at least quarterly to insure that the fund is not in excess of needs, and appropriate adjustments are made accordingly.

(c) Requests to establish imprest funds shall be made to the responsible fiscal office. At larger activities where the cashier may not be conveniently located near the purchasing office, a Class C Cashier may be installed in the purchasing office. Documentation of cash purchases shall be in accordance with instructions contained in the HHS Voucher Audit Manual Part 1, Chapter 1-10.

Subpart 313.5—Purchase Orders

313.505 Purchase order and related forms.

313.505-3 Standard Form 44, Purchase Order—Invoice—Voucher.

(d) Since the Standard Form 44 is an accountable form, a record shall be maintained of serial numbers of the form, to whom issued, and date issued. SF-44's shall be kept under adequate lock and key to prevent unauthorized use. A reservation of funds shall be established to cover total anticipated expenditures prior to use of the SF-44.

PART 314—FORMAL ADVERTISING

Subpart 314.4—Opening of Bids and Award of Contract

Sec.
314.404 Rejection of bids.
314.404-1 Cancellation of invitations after opening.
314.406 Mistakes in bids.
314.406-3 Other mistakes disclosed before award.
314.406-4 Mistakes after award.
314.407 Award.
314.407-8 Protests against award.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 314.4—Opening of Bids and Award of Contract

314.404 Rejection of bids.

[51 FR 44294, Dec. 9, 1986]

314.404-1 Cancellation of invitations after opening.

(c) The chief of the contracting office (CCO) shall make the determination required by FAR 14.404-1(c).

(e) The CCO shall make the referenced determination.

[51 FR 44294, Dec. 9, 1986]

314.406 Mistakes in bids.

[49 FR 13978, Apr. 9, 1984]

314.406-3 Other mistakes disclosed before award.

(e) Authority has been delegated to the Protest Control Officer, Office of Procurement and Logistics Policy, OPAL-ASMB to make administrative determinations in connection with mistakes in bid alleged after opening and before award. This authority may not be redelegated.

(f) Each proposed determination shall have the concurrence of the Chief, Business Law Branch, Business and Administrative Law Division, Office of General Counsel.

(g)(3) The data required by FAR 14.406-3(g)(3) shall be marked "IMMEDIATE ACTION—MISTAKE IN BID" and submitted through acquisition channels to the Protest Control Officer, Office of Procurement and Logistics Policy, OPAL-ASMB. The file shall be assembled in an orderly manner and shall include an index of enclosures. A single copy of the file is sufficient.

(4) Since examination of evidence is necessary to determine the proper course of action to be taken, no action will be taken on cases referred by telephone or telegraph.

(5) Where the evidence submitted by the bidder is incomplete or in need of clarification, the contracting officer shall document the file to indicate the effort made to obtain clear and convincing evidence to support the alleged mistake. Since the burden of providing such evidence lies with the bidder-claimant, repeated efforts to obtain such information are neither necessary nor desirable.

(i) Doubtful cases shall *not* be submitted by the contracting officer directly to the Comptroller General, but shall be submitted as indicated in 314.406-3(g)(3).

[49 FR 13978, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

314.406-4 Mistakes after award.

(c) Authority has been delegated to the Protest Control Officer, Office of Procurement and Logistics Policy, OPAL-ASMB to make administrative determinations in connection with mistakes in bid alleged after award. This authority may not be redelegated.

(d) Each proposed determination shall have the concurrence of the Chief, Business Law Branch, Business and Administrative Law Division, Office of General Counsel.

(2) The data required by FAR 14.406-4(e)(2) shall be marked "IMMEDIATE ACTION—MISTAKE IN BID" and submitted as prescribed in 314.406-3(g)(3).

[49 FR 13978, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

314.407 Award.

[49 FR 13978, Apr. 9, 1984]

314.407-8 Protests against award.

See Subpart 333.1—Protests.

[50 FR 23129, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

PART 315—CONTRACTING BY NEGOTIATION

Subpart 315.1—General Requirements for Negotiation

Sec.

315.103 Converting from sealed bidding to negotiation procedures.

Subpart 315.4—Solicitation and Receipt of Proposals and Quotations

315.404 Presolicitation notices and conferences.
315.405 Solicitations for information or planning purposes.
315.405-1 General.
315.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).
315.406-1 Uniform contract format.
315.406-2 Part I—The Schedule.
315.406-3 Part II—Contract clauses.
315.406-5 Part IV—Representations and instructions.
315.407 Solicitation provisions.
315.408 Issuing solicitations.
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315.413 Disclosure and use of information before award.
315.413-1 Alternate I.
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Subpart 315.5—Unsolicited Proposals

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315.506 Agency procedures.
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315.604 Responsibilities.
315.605 Evaluation factors.
315.607 Disclosure of mistakes before award.
315.608 Proposal evaluation.
315.608-70 Technical evaluation plan.
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Sec.

315.608-72 Procedures for handling and disclosing proposals.
315.608-73 Receipt of proposals.
315.608-74 Convening the technical evaluation panel.
315.608-75 Rating and ranking of proposals.
315.608-76 Technical evaluation report.
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315.609 Competitive range.
315.610 Written or oral discussions.
315.611 Best and final offers.
315.670 Negotiation with the selected source.
315.671 Post negotiation contract preparation and award.
315.672 Preparation of negotiation memorandum.

Subpart 315.8—Price Negotiation

315.804 Cost or pricing data.
315.804-3 Exemptions from or waiver of submission of certified cost or pricing data.
315.805 Proposal analysis.
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Subpart 315.9—Profit

315.900 Scope of subpart.
315.905-70 Structured approach.
315.905-71 Profit factors.
315.905-72 Contractor effort.
315.905-73 Other factors.
315.905-74 Facilities capital cost of money.

Subpart 315.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

315.1000 General.
315.1003 Debriefing of unsuccessful offerors.
315.1004 Protests against award.
315.1005 Discovery of mistakes.

Subpart 315.70—Requests for Contract

315.7000 Scope of subpart.
315.7001 General.
315.7002 Procedures.
315.7003 Responsibilities.
315.7004 Transmittal.
315.7005 Format and content.
315.7006 Review.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 13979, Apr. 9, 1984, unless otherwise noted.

Subpart 315.1—General Requirements for Negotiation

315.103 Converting from sealed bidding to negotiation procedures.

The chief of the contracting office has the authority to make the determination referenced in FAR 15.103.

[51 FR 44294, Dec. 9, 1986]

Subpart 315.4—Solicitation and Receipt of Proposals and Quotations

315.404 Presolicitation notices and conferences.

(c) *Presolicitation conferences.* (1) The presolicitation conference may only be used when approved by the chief of the contracting office.

315.405 Solicitations for information or planning purposes.

315.405-1 General.

The determination approval required by FAR 15.405-1 that a solicitation for information or planning purposes is appropriate shall be made by the chief of the contracting office.

315.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

(a) The contracting officer is responsible for preparing the RFP with the assistance of the project officer. The purpose of the RFP is to convey information that prospective offerors need to prepare a proposal. The RFP includes the statement of work and the terms, conditions and provisions that will form the basis for the final definitive contract. It specifies all the information that prospective offerors must furnish to permit a meaningful and equitable evaluation of their offers. The RFP must be clear, complete, accurate, and consistent with the requirements of the acquisition so that it provides all who receive it with the same understanding of the requirements. Much of the information in the RFP is either derived directly from the request for contract or is otherwise furnished by the project officer. Therefore, it is important that the project officer develop a meaningful request for contract and supporting documentation during the initial presolicitation phase which will fully satisfy program needs and objectives when included in the RFP (see Subpart 315.70).

(b) Careful drafting of the RFP is vital to the proper working of the competitive process. The success of the acquisition depends, in large measure, on how well the work to be performed and the basic ground rules under which the competition will be conducted are described in the RFP. Particular effort must be made to develop a comprehensive and accurate statement of work (see 307.105-3 and FAR 35.007) to prevent ambiguities and to avoid misunderstandings which might otherwise surface at later stages of the acquisition.

(c) Care should be taken to avoid conflicting statements in the RFP. Clear distinctions must be made as to the contents and purpose of the statement of work, the instructions to offerors, and the evaluation criteria. Briefly:

(1) The statement of work must clearly specify the work to be done by the resultant contractor (or, if it is an R & D acquisition, present a clear statement of the requirements, see FAR Part 35);

(2) The general, technical, and business instructions must delineate all the essential information prospective offerors need to know in preparing their proposals (see 315.406-5(b)); and

(3) The evaluation criteria must clearly indicate the technical, management, personnel, and cost or pricing factors which are to be the major considerations in selecting the successful offeror (see 315.406-5(c)).

(d) The RFP must require that proposals be submitted in two parts—a "Technical Proposal" and a "Business Proposal." Each part is to be separate and complete in itself so that evaluation of one may be accomplished independently of the other.

(e) The technical and business proposal instructions of the RFP must provide all the information deemed essential for proper evaluation of the proposals so that all prospective offerors are aware of all requirements, and so that differences in proposals will reflect each offeror's individual approach to the clear and unambiguous requirements and criteria stated in the RFP.

(f) The RFP must inform prospective offerors of all evaluation criteria and of the relative importance or weight attached to each criterion. Evaluation criteria must be described sufficiently enough in the RFP to inform prospective offerors of the significant matters which should be addressed in the proposals. Only the evaluation criteria set forth in the RFP shall be used in the evaluation of proposals, and the criteria can only be modified by a formal amendment to the RFP.

(g) Generally, the RFP will provide that the technical proposal not contain any reference to cost. However, resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included in the technical proposal so that the offeror's understanding of the scope of work may be evaluated.

(h) The project officer should be offered the opportunity to review the finalized RFP before it is printed and released.

315.406-1 Uniform contract format.

The uniform contract format specified in FAR 15.406-1 and Table 15-1 shall be used by all contracting activities of the Department.

[49 FR 13979, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

315.406-2 Part I—The Schedule.

(a) *Section A, Solicitation/contract form.*

(3) Contracting activities are encouraged to use SF 33 for RFPs. In those instances where a contracting activity believes the SF 33 is not appropriate, a transmittal letter may be used. However, it is essential that the transmittal letter contain the pertinent information that must be brought to the attention of prospective offerors, so the information contained in FAR 15.406-2(a)(3) shall be included in it. (In item (viii), the Employer's Identification Number (EIN) may be requested in place of the offeror's DUNS number.) The transmittal letter should also contain reference to the solicitation provision "Late Submissions, Modifications, and Withdrawals of Proposals or Quotations" and stress the importance of timeliness. The last paragraph of the transmittal letter should provide the name and complete telephone number of a contract specialist who can provide information concerning the solicitation.

315.406-3 Part II—Contract clauses.

Section I, Contract clauses.

This section should contain all the pertinent contract clauses applicable to the acquisition, to include those contained in the general provisions, any additions or modifications to the general provisions, and special contract clauses (see Part 352—Solicitation Provisions and Contract Clauses).

315.406-5 Part IV—Representations and instructions.

(a) *Section K, Representations, certifications, and other statements of offerors or quoters.*

(1) This section shall begin with the following statements and continue with the applicable representations and certifications:

To Be Completed by the Offeror: (The Representations and Certifications must be executed by an individual authorized to bind the offeror.)

The offeror makes the following Representations and Certifications as part of its proposal (check or complete all appropriate boxes or blanks on the following pages).

Name of offeror ———

RFP No. ———

Signature of authorized individual ———

Date ———

Type name of authorized individual ———

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(2) The contracting officer shall insert in all solicitations the representations and certifications at—

(i) FAR 52.203-2, Certificate of Independent Price Determination;

(ii) FAR 52.203-4, Contingent Fee Representation and Agreement;

(iii) FAR 52.215-6, Type of Business Organization;

(iv) FAR 52.215-20, Place of Performance;

(v) FAR 52.219-1, Small Business Concern Representation;

(vi) FAR 52.219-2, Small Disadvantaged Business Concern Representation;

(vii) FAR 52.219-3, Women-Owned Small Business Representation;

(viii) FAR 52.222-19, Walsh-Healy Public Contracts Act Representation;

(ix) FAR 52.222-21, Certification of Nonsegregated Facilities;

(x) FAR 52.222-22, Previous Contracts and Compliance Reports;

(xi) FAR 52.222-25, Affirmative Action Compliance;

(xii) FAR 52.223-1, Clean Air and Water Certification;

(xiii) FAR 52.225-1, Buy American Certification;

(xiv) FAR 52.230-2, Cost Accounting Standards Notices and Certification (Nondefense);

(xv) FAR 15.804-4, Certificate of Current Cost or Pricing Data.

NOTE: The following paragraph shall be inserted between the title and text of this certificate:

(When a certificate of cost or pricing data is required to be submitted in accordance with Federal Acquisition Regulation (FAR) 15.804-4, the Contracting Officer will request that the offeror complete, execute, and submit to the Contracting Officer a certification in the format shown in the following Certificate of Current Cost or Pricing Data. The certification shall be submitted only at the time negotiations are concluded. Offerors should complete the certificate set forth below and return it when requested by the Contracting Officer.)

(xvi) 352.215-70, Duplication of Cost Certification;

(xvii) 352.215-71, Employer's Identification Number; and

(xviii) 352.225-12, Country of Manufacturer Representation.

(b) *Section L, Instructions, conditions, and notices to offerors and quoters.* This section shall be comprised of the general instructions, technical proposal instructions, and business proposal instructions, as well as pertinent solicitation provisions (see FAR 15.407).

(1) *General instructions.*

(i) The general instructions provide basic guidance to prospective offerors that informs them of what is required in the preparation and submission of proposals. The general instructions must include the following statements and any instructions pertinent to the individual acquisition and applicable requirements of the OPDIV, agency, or regional office.

GENERAL INSTRUCTIONS

The following instructions establish the acceptable minimum requirements for the format and content of proposals:

Your special attention is directed to the requirements for technical and business proposals to be submitted in accordance with these instructions.

Any resultant contract shall include the general provisions applicable to the selected offeror's organization and type of contract awarded. Copies of general provisions may be obtained by contacting the contracting officer. Any additional clauses required by public law, executive order, or acquisition regulations, in effect at the time of execution of the proposed contract, will be included.

The proposal must be prepared in two parts: a "Technical Proposal" and a "Business Proposal." Each of the parts shall be separate and complete in itself so that evaluation of one may be accomplished independently of evaluation of the other. The technical proposal must not contain reference to cost; however, resource information, such as data concerning labor hours and categories, materials, subcontracts, etc., must be contained in the technical proposal so that your understanding of the scope of the work may be evaluated. It must disclose your technical approach in sufficient detail to provide a clear and concise presentation that includes, but is not limited to, the requirements of the technical proposal instructions.

The proposal must be signed by an official authorized to bind your organization. (Number) copies of your technical proposal and (number) copies of your business proposal must be submitted to: (Insert complete address indicating where the proposal is to be sent and how it is to be marked. Provide similar information for hand-delivered proposals.)

You may, at your discretion, submit alternate proposals, or proposals which deviate from the requirements; *provided*, that you also submit a proposal for performance of the work as specified in the statement of work. These proposals may be considered if overall performance would be improved or not compromised, and if they are in the best interest of the Government. Alternate proposals, or deviations from any requirements of this RFP, must be clearly identified.

> The Government will evaluate proposals in accordance with the evaluation criteria set forth in Section M of this request for proposals.
>
> It is understood that your proposal will become part of the official contract file.
>
> The RFP does not commit the Government to pay any cost for the preparation and submission of a proposal. In addition, the Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with this proposed acquisition.

(ii) Include either of the following in the General Instructions if prospective offerors are to be informed of the Government's estimate of the level of effort necessary to accomplish the requirement:

> The Government considers the level of effort to perform the resultant contract should take the following staff-hours: (insert a breakdown of the Government's staff-hour estimates by categories). These estimates are furnished for the offeror's information only and are not to be considered restrictive for proposal purposes; or
>
> To assist you in the preparation of your proposal, the Government considers the effort to perform this contract to be approximately (insert the total number) staff-hours. This number is furnished for the offeror's information only and is not considered restrictive for proposal purposes.
>
> (NOTE: The first paragraph should only be used for term (e.g. level of effort task order), rather than completion type, contracts.)

(iii) If the proposed contract will involve performance or services on a Government installation, insert the following in the General Instructions:

> Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract, to the extent such information is reasonably obtainable. In no event will failure to inspect the site constitute grounds for claims by the contractor after the award of a contract.

(iv) If reference material is to be provided for use in preparation of proposals, insert either of the following:

> To assist offerors in preparing their proposals, reference material consisting of (insert title or description of publications, specifications, drawings, reports, or other documentation being made available as reference material) will be available for inspection at (insert name and address of building and room number).
>
> Offerors are expected to examine all reference material prior to preparation and submission of their proposals. Failure to do so will be at the offeror's risk; or
>
> To assist offerors in preparing their proposals, reference material consisting of (insert title or description of publications, specifications, drawings, reports, or other documentation being furnished as reference material) is enclosed. Offerors are expected to examine all reference material prior to preparation and submission of their proposal. Failure to do so will be at the offeror's risk.

(v) If the reference material being provided is to be returned to the Government, include the following statement:

> All reference material furnished hereunder shall be returned within (insert number) days after the submission of proposals to (insert name and address of building and room number).

(vi) If an incentive type contract is being considered, a notice to the offeror of the Government's desire as to use of incentives considered applicable, objectives of the incentive performance goals, schedules, milestones, critical delivery parameters, and similar information must be included.

(2) *Technical proposal instructions.*

(i) The technical proposal instructions should clearly and concisely describe the information prospective offerors must provide in their technical proposals. The instructions should address the need for submission of a detailed work plan indicating how each aspect of the statement of work is to be accomplished, a discussion of how the work is to be organized, staffed, and managed, and statements of the qualifications and experience of the prospective offeror and its key personnel.

(ii) The technical proposal instructions must be specific enough to convey the information the program office will require from offerors to allow the technical proposal evaluators to determine whether a proposal is acceptable. Therefore, it is essential that the instructions are written to elicit the information necessary to fully address all the elements of the work plan with particular emphasis on the evaluation criteria, so that evaluators may readily evaluate each offer in the pertinent areas. The instructions should not require the submission of excessive information since this will complicate the evaluation process and could cause unnecessary proposal preparation costs for offerors.

(iii) The technical proposal instructions should require that technical proposals be prepared in a specified format to facilitate evaluation. A uniform format will minimize evaluators' efforts and should minimize the amount of extraneous and voluminous material sometimes included in proposals.

(iv) Since specific instructions must be developed to suit the needs of the individual acquisition, detailed guidance concerning the contents of the technical proposal instructions is not presented here. However, the following represents a sampling of general statements which may be helpful in the preparation of the instructions:

TECHNICAL PROPOSAL INSTRUCTIONS

Proposals which merely offer to conduct a program in accordance with the requirements of the Government's scope of work will not be eligible for award. You must submit an explanation of the proposed technical approach in conjunction with the tasks to be performed in achieving the project objectives.

A detailed work plan must be submitted indicating how each aspect of the statement of work is to be accomplished. Your technical approach should be in as much detail as you consider necessary to fully explain your proposed technical approach or method. The technical proposal should reflect a clear understanding of the nature of the work being undertaken.

The technical proposal must include information on how the project is to be organized, staffed, and managed. Information should be provided which will demonstrate your understanding and management of important events or tasks. You must explain how the management and coordination of consultant and/or subcontractor efforts will be accomplished.

The technical proposal must include a list of names and proposed duties of the professional personnel, consultants, and key subcontractor employees assigned to the project. Their résumés should be included and should contain information on education, background, recent experience, and specific scientific or technical accomplishments. The approximate percentage of time each individual will be available for this project must be included. The proposed staff hours for each of the above individuals should be allocated against each task or subtask for the project.

The technical proposal must provide the general background, experience, and qualifications of the organization. Similar or related contracts, subcontracts, or grants should be included and contain the name of the customer, contract or grant number, dollar amount, time of performance, and the names and telephone numbers of the project officer and contracting/grants officer.

The technical proposal must contain a discussion of present or proposed facilities and equipment which will be used in the performance of the contract.

The technical proposal must be prepared and submitted in the following format:

(Provide the required format.)

(3) *Business proposal instructions.* Business proposal instructions consist of cost and pricing data and administrative and management data.

(i) *Cost and pricing data.* Prospective offerors must be informed in the business proposal instruction that they are required to submit cost or pricing information in sufficient detail to allow a complete cost analysis. (See FAR 15.804 for requirements on cost or pricing data.) Categories and amounts of labor, materials, travel, computer time, overhead and other costs should be requested. Prospective offerors are to be provided Standard Form 1411, Contract Pricing Proposal Cover Sheet, for use in preparing the cost of pricing data, and are to be told to submit, as a minimum, cost proposals fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amount. Prospective offerors are to comply with the instruction on the SF 1411 and fill in or check the appropriate boxes. In addition, they should be informed to itemize the cost for individual elements, each as analytical studies, reports, etc., and the estimated cost of each phase or segment of the offered performance.

(ii) *Administrative and management data.*

(A) The business proposal instructions must be written so that the contracting officer receives adequate information to evaluate each offeror's management capability and to determine whether each offeror is responsible. Therefore, under this section, information should be requested to allow the contracting officer to assess the following factors as they apply to the instant acquisition:

(*1*) The offeror's financial capability;

(*2*) The offeror's capability to meet delivery or performance schedules;

(*3*) The offeror's record of past performance;

(*42*) The offeror's record of business integrity;

(*5*) The offerors's possession of necessary organization, experience, and technical skills, or the ability to obtain them;

(*6*) The offeror's possession of required facilities; and

(*7*) Any other special consideration involved in the instant acquisition.

In some cases, these factors may duplicate evaluation criteria and may be adequately addressed in the technical proposal instructions. However, the contracting officer must ensure that they are covered in both the business proposal instructions and the technical proposal instructions.

(B) The contracting officer may determine that other administrative data in the form of additional business or cost information is necessary. Some examples of additional information include:

(*1*) A copy of the current agreement on indirect cost rates;

(*2*) A copy of the most recent financial statements;

(*3*) A discussion on the extent of proposed subcontracting with small and disadvantaged business enterprises;

(*4*) A REQUEST FOR PRICING OR COST BREAKDOWN TAILORED TO THE INSTANT ACQUISITION TO PROVIDE INFORMATION FOR A MORE THOROUGH AND COMPLETE COST ANALYSIS; AND

(5) A request for explicit instructions on pricing of options and indivudal line items.

However, care should be taken to request additional information only when necessary, to prevent excessive proposal preparation costs for offerors.

(c) The following are required statements which must be included in the RFP.

> Your proposal must stipulate that it is predicated upon all the terms and conditions of this RFP. In addition, it must contain a statement to the effect that it is firm for a period of at least (insert number) days from the date of receipt by the Government.
>
> It is HHS policy that contractors provide all equipment and facilities necessary for performance of contracts; however, in some instances, an exception may be granted to furnish Government-owned property or to authorize purchase with contract funds. If additional equipment must be acquired, you must include in your proposal the description and estimated cost of each item, and whether you propose to furnish the item with your own funds.
>
> You must identify all Government-owned property in your possession and all property acquired from Federal funds, to which you have title, that is proposed to be used in the performance of the prospective contract.
>
> The management and control of Government property must be in accordance with HHS Publication (OS) 74-115 entitled, "Control of Property in Possession of Contractors," a copy of which will be provided upon request.

(c) *Section M, Evaluation factors for award*—(1) *General.* (i) The evaluation criteria must be developed by the project officer and submitted to the contracting officer in the request for contract (RFC) for inclusion in the RFP. Development of these criteria and the assignment of the relative importance or weight to each criterion require the exercise of judgment on a case-by-case basis because they must be tailored to the requirements of the individual acquisition. Since the criteria will serve as a standard against which all proposals will be evaluated, it is imperative that they be chosen carefully to emphasize those factors considered to be critical in the selection of a contractor.

(ii) The finalized evaluation criteria and indications of their relative importance or weights, as included in the RFP, cannot be changed except by a formal amendment to the RFP issued by the contracting officer. No factors other than those set forth in the RFP shall be used in the evaluation of proposals.

(2) *Review of evaluation criteria.* (i) The evaluation criteria should be reviewed by the contracting officer in terms of the work statement. This

review is not intended to dictate to the program office or project officer, but rather to ensure that the evaluation criteria are clear, concise, and fair so that all potential offerors are fully aware of the bases for proposal evaluation and are given an equal opportunity to compete.

(ii) The project officer and the contracting officer should then review the evaluation criteria together to ascertain the following:

(A) The criteria are described in sufficient detail to provide the offerors (and evaluators) with a total understanding of the factors to be involved in the evaluation process;

(B) The criteria address the key programmatic concerns which the offerors must be aware of in preparing proposals;

(C) The criteria are specifically applicable to the instant acquisition and are not merely restatements of criteria from previous acquisitions which are not relevant to this acquisition; and

(D) The criteria are selected to represent only the significant areas of importance which must be emphasized rather than a multitude of factors. (All criteria tend to lose importance if too many are included. Using too many criteria will prove as detrimental as using too few.)

(3) *Examples of topics that form a basis for evaluation criteria.* Typical examples of topics that form a basis for the development of evaluation criteria are listed in the following paragraphs. These examples are intended to assist in the development of actual evaluation criteria for a specific acquisition and should only be used if they are applicable to that acquisition. They are not to be construed as actual examples of evaluation criteria to be included in the RFP.

(i) Understanding of the problem and statement of work;

(ii) Method of accomplishing the objectives and intent of the statement of work;

(iii) Soundness of the scientific or technical approach for executing the requirements of the statement of work (to include, when applicable, preliminary layouts, sketches, diagrams, other graphic representations, calculations, curves, and other data necessary for presentation, substantiation, justification, or understanding of the approach);

(iv) Special technical factors, such as experience or pertinent novel ideas in the specific branch of science or technology involved;

(v) Feasibility and/or practicality of successfully accomplishing the requirements (to include a statement and discussion of anticipated major difficulties and problem areas and recommended approaches for their resolution);

(vi) Availability of required special research, test, and other equipment or facilities;

(vii) Managerial capability (ability to achieve delivery or performance requirements as demonstrated by the proposed use of management and other personnel resources, and to successfully manage the project, including subcontractor and/or consultant efforts, if applicable, as evidenced by the management plan and demonstrated by previouis experience).

(viii) Availability, qualifications, experience, education, and competence of professional, technical, and other personnel, to include proposed subcontractors and consultants (as evidenced by resumes, endorsements, and explanations of previous efforts); and

(ix) Soundness of the proposed staff time or labor hours, propriety of personnel classifications (professional, technical, others), necessity for type and quantity of material and facilities proposed, validity of proposed subcontracting, and necessity of proposed travel.

(4) *Relative importance or weight.*

(i) A statement or indication of the relative importance or weight must be assigned to each evaluation criterion to inform prospective offerors (and evaluators) of the specific significance of each criterion in comparsion to the other criteria. Similarly, if a criterion is subdivided into parts, each of the parts must be assigned a statement or indication of the relative importance or weight.

(ii) The two principal methods used to indicate the relative importance or weight are the numerical score and adjective description. The Department does not prescribe a single method for determining the relative importance or weight, but recommends the use of the numerical score method because it is more precise and informative. However, it is recognized that in some instances the use of the adjective description method be more appropriate and, hence, may be used when that determination is made.

(iii) Cost or price is not generally included as one of the evaluation criteria and is not assigned an indication of relative importance or weight. However, a statement must be included in the RFP to reflect the relationship of cost or price in comparison to the other criteria. The contracting officer must ensure that this statement accurately reflects the appropriate balance between cost or price and the technical factors. The contracting officer and project officer should work together in arriving at the final determination regarding the relationship. The following are examples of statements that may be used to reflect this relationship. However, since these examples represent only the two extremes and the middle position, another statement may be developed to reflect the relationship which applies to the instant acquisition.

(A) You are advised that paramount consideration shall be given to the evaluation of technical proposals rather then cost or price.

(B) You are advised that paramount consideration shall be given to cost or price rather than the evaluation of technical proposals.

(C) You are advised that the evaluation of technical proposals and cost or price are of approximately equal value.

[49 FR 13979, Apr. 9, 1984; 49 FR 36110, Sept. 14, 1984]

315.407 Solicitation provisions.

(c)(2) The referenced provision (FAR 52.215-6, Type of Business Organization) is a representation, has been included under Section K (see 315.406-5(a)(2)(iii)), and need not be restated again.

(8) The provision at 352.215-12 shall be used in place of that specified at FAR 52.215-12.

(h) The referenced provision (FAR 52.215-20, Place of Performance) is to be considered a certification and is included under Section K (see 315.406-5(a)(2)(iv)); it need not be restated again.

315.408 Issuing solicitations.

The minimum proposal preparation or response time between the date of distribution of a RFP and the date set for receipt of proposals shall not be less than 30 calendar days. In urgent situations, the 30 calendar day requirement may be waived by the contracting officer.

315.409 Pre-proposal conferences.

If a pre-proposal conference is to be held, the provision at 352.215-72 shall be included in the solicitation.

315.410 Amendment of solicitations before closing date.

For additional information on amendments to solicitations, see FAR 15.606.

315.413 Disclosure and use of information before award.

315.413-1 Alternate I.

The Department shall not use Alternate I procedures.

315.413-2 Alternate II.

The Department shall use the Alternate II procedures as modified in this subsection and shall use the provision at 352.215-12, Restriction on Disclosure and Use of Data, rather than the similar provision at FAR 15.215-12 (see 315.407(c)(8)). Any reference in the FAR to the provision at FAR 52.215-12 shall apply to the provision at 352.215-12.

(b) The term "data," as used in this section and in 352.215-12, refers to trade secrets, business data, and technical data. Trade secrets, within the meaning of 18 U.S.C. 1905, include, for example, processes, formulas, and chemical compositions. Business data includes, for example, commercial information, financial information, and cost and pricing data. Technical data includes, for example, plans, designs, suggestions, improvements and concepts.

The Department recognizes that requests for proposals may require the offeror, including its prospective subcontractor(s), if any, to submit data which the offeror does not want used or disclosed for any purpose other than for evaluation of the proposal. Each proposal containing data which the offeror desires to restrict must be marked on the cover sheet by the offeror with the legend set forth at 352.215-12. Proposals, or portions of proposals, so marked shall be handled in accordance with the provisions of the legend.

(c) Contracting officers receiving proposals which contain restrictive statements or legends not conforming to the referenced provision at 352.215-12 must carefully evaluate the form and substance of the restriction before making a determination to reject the proposal. Deviations in form which do not compromise the Government's rights may be accepted if approved by the activity's FOI official and the Office of General Counsel, Business and Administrative Law Division.

(e) The Government notice shown in FAR 15.413-2(e) shall be used by this Department and is to be placed on the cover sheet of each proposal or quotation upon its receipt. The Government notice shall be completed by adding the following to the end of the last sentence: "HHSAR paragraph 315.608-72."

(f) The Department sometimes finds it necessary (and in some instances is required by law) to seek evaluation of proposals outside the Department (see 315.608(d)(6)). All conditions required by FAR 15.413-2(f) have been met and are covered in 315.608-72, Procedures for handling and disclosing proposals. In regard to item (f)(1) of FAR 15.413-2, the Department has found that the procedure stated in the first sentence of paragraph 315.608-72 is best and considers it in compliance with the FAR requirement.

(g) See Subpart 324.2 for detailed procedures concerning FOIA requests.

[49 FR 13979, Apr. 9, 1984; 49 FR 36110, Sept. 14, 1984, as amended at 51 FR 44294, Dec. 9, 1986]

315.470 Review of RFP.

The principal official responsible for acquisition shall establish procedures to ensure that an independent review of the RFP is made between the time the synopsis is sent to the Commerce Business Daily announcing the availability of the RFP and the release date of the RFP. The individual selected to conduct the review must possess the acquisition knowledge necessary to readily ascertain whether the RFP contains the required information to be in conformance with all laws, regulations, and internal procedures and instructions. The individual selected to conduct the review must be a person other than the preparer of the RFP.

[49 FR 13979, Apr. 9, 1984, as amended at 50 FR 23129, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

Subpart 315.5—Unsolicited Proposals

315.505 Content of unsolicited proposals.

(d) Certification by offeror—To ensure against contacts between Department employees and prospective offerors which would exceed the limits of advance guidance set forth in FAR 15.504 resulting in an unfair advantage to an offeror, the principal official responsible for acquisition (or designee) shall ensure that the following certification is furnished to the prospective offeror and the executed certification is included as part of the resultant unsolicited proposal:

UNSOLICITED PROPOSAL CERTIFICATION BY OFFEROR

This is to certify, to the best of my knowledge and belief, that:

a. This proposal has not been prepared under Government supervision.

b. The methods and approaches stated in the proposal were developed by this offeror.

c. Any contact with employees of the Department of Health and Human Services has been within the limits of appropriate advance guidance set forth in FAR 15.504.

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: ______
Organization: ______
Name: ______
Title: ______

(This certification shall be signed by a responsible official of the proposing organization or a person authorized to contractually obligate the organization.)

315.506 Agency procedures.

(a) The principal official responsible for acquisition is responsible for establishing procedures to comply with FAR 15.506(a).

(b) The principal official responsible for acquisition or his/her designee shall be the point of contact for coordinating the receipt and handling of unsolicited proposals. Contacts made outside the contracting activity shall be promptly coordinated with the principal official responsible for acquisition or the designee.

315.506-1 Receipt and initial review.

(d) An unsolicited proposal shall not be refused consideration merely because it was initially submitted as a grant application. However, contracts shall not be awarded on the basis of unsolicited proposals which have been rejected for grant support on the ground that they lack scientific merit.

315.509 Limited use of data.

The legend, Use and Disclosure of Data, prescribed in FAR 15.509(a) is to be used by the offeror to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may have to be disclosed as a result of a request submitted pursuant to the Freedom of Information Act. Because of this possibility, the following notice shall be furnished to all prospective offerors of unsolicited proposals whenever the legend is provided in accordance with FAR 15.504(b)(7):

> The Government will attempt to comply with the "Use and Disclosure of Data" legend. However, the Government may not be able to withhold a record (data, document, etc.) nor deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act. Records which the offeror considers to be trade secrets and commercial or financial information and privileged or confidential must be identified by the offeror as indicated in the referenced legend.

Subpart 315.6—Source Selection

315.602 Applicability.

(b) This subpart does not apply to contracts for architect-engineer services or contracts awarded to the Small Business Administration under section 8(a) of the Small Business Act.

315.604 Responsibilities.

(d) Personnel participating in the evaluation process must not discuss or reveal information concerning the evaluations except to an individual participating in the same evaluation proceedings, and then only to the extent that the information is required in connection with the proceedings. Divulging information during the evaluation, selection, and negotiation phases of the acquisition to offerors or to personnel not having a need to know could jeopardize the resultant award. Therefore, the contracting officer must instruct personnel participating in the evaluations to observe these restrictions and insure that all personnel understand that unauthorized disclosure of information, no matter how innocent, could compromise the acquisition process and is prohibited.

(e) Only the contracting officer or his/her authorized representative within the contracting office shall conduct discussions with offerors relative to any aspect of the acquisition.

315.605 Evaluation factors.

(e) The evaluation criteria included in the solicitation serve as the standard against which all proposals are evaluated. Prospective offerors rely upon the evaluation criteria in the solicitation in developing proposals, and they must be assured that the evaluation is conducted in accordance with those criteria. All personnel involved in the evaluation process must make sure that the evaluation criteria contained in the solicitation are the *only* criteria used in conducting the evaluation. See FAR 15.406-5(c) and 315.406-5(c) for detailed guidance on evaluation criteria.

315.607 Disclosure of mistakes before award.

(a) The contracting officer shall require that offerors' clarifications are in writing.

(c)(3) The chief of the contracting office is authorized to make the written determination permitting a correction of a mistake in a proposal.

315.608 Proposal evaluation.

(a)(1) *Cost of price evaluation.* (See 315.608-77.)

(2) *Technical evaluation.* (See 315.608-75 and 76.)

(b) The determination required by FAR 15.608(b) shall be made by the chief of the contracting office.

[50 FR 23130, May 31, 1985, and 50 FR 38004, Sept. 19, 1985, as amended at 51 FR 44294, Dec. 9, 1986]

315.608-70 Technical evaluation plan.

(a) A technical evaluation plan may be required by the contracting officer, at his/her discretion, when an acquisition is sufficiently complex as to warrant a formal plan.

(b) The technical evaluation plan should include at least the following:

(1) A list of technical evaluation panel members, their organizations as well as a list of their major consulting clients (if applicable), their qualifications, and curricula vitae (if available);

(2) A justification for using non-Government technical evaluation panel members. (Justification is not required if non-Government evaluators will be used in accordance with standard contracting activity procedures or policies);

(3) A statement that there is no apparent or actual conflict of interest regarding any panel member;

(4) A copy of each rating sheet, approved by the contracting officer, to be used to assure consistency with the evaluation criteria; and

(5) A brief description of the general evaluation approach.

(c) The technical evaluation plan must be signed by an official witnin the program office in a position at least one level above the project officer or in accordance with contracting activity procedures.

(d) The technical evaluation plan should be submitted to the contracting officer for review and approval before the solicitation is issued. The contracting officer shall make sure that the principal factors relating to the evaluation are reflected in the evaluation criteria when conducting the review of the plan.

[50 FR 23130, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608-71 Technical evaluation panel.

(a) *General.* (1) A technical evaluation panel is required for all acquisitions applicable to this subpart which are expected to exceed $300,000. The contracting officer has the discretion to require a technical evaluation panel for acquisitions not exceeding $300,000 based on the complexity of the acquisition.

(2) The technical evaluation process requires careful consideration regarding the size, composition, expertise, and function of the technical evaluation panel. The efforts of the panel can result in the success or failure of the acquisition.

(b) *Role of the project officer.* (1) The project officer is the contracting officer's technical representative for the acquisition action. The project officer may be a voting member of the technical evaluation panel, and may also serve as the chairperson of the panel, unless prohibited by law or contracting activity procedures.

(2) The project officer is responsible for recommending panel members who are knowledgeable in the technical aspects of the acquisition and who are competent to identify strengths and weaknesses of the various proposals. The program training requirements specified in 307.170 must be adhered to when selecting prospective panel members.

(3) The project officer shall ensure that persons possessing expertise and experience in addressing issues relative to sex, race, national origin, and handicapped discrimination be included as panel members in acquisitions which address those issues. The intent is to balance the composition of the panel so that qualified and concerned individuals may provide insight to other panel members regarding ideas

and approaches to be taken in the evaluation of proposals.

(4) The project officer is to submit the recommended list of panel members to an official within the program office in a position at least one level above the project officer or in accordance with contracting activity procedures. This official will review the recommendations, appoint the panel members, and select the chairperson.

(5) The project officer shall arrange for adequate and secure working space for the panel.

(c) *Role of the contracting officer.* (1) the contracting officer is the Department's official representative with delegated acquisition authority to enter into and administer contracts. The term "contracting officer," as used in this subpart, may be the contracting officer or his/her designated representative within the contracting office.

(2) The contracting officer shall not serve as a member of the technical evaluation panel but should be available to:

(i) Address the initial meeting of the technical evaluation panel (see 315.608-74(c));

(ii) Provide assistance to the evaluators as required; and

(iii) Ensure that the scores adequately reflect the written technical evaluation report comments (see 315.608-76).

(d) *Conflicts of interest.* (1) If a panel member has an actual or apparent conflict of interest related to a proposal under evaluation, he/she shall be removed from the panel and replaced with another evaluator. If a suitable replacement is not available, the panel shall perform the review without a replacement.

(2) For the purposes of this subpart, conflicts of interest are defined in the Department's Standards of Conduct set forth in 45 CFR Part 73 which incorporates 5 CFR Part 737, Post Employment Conflict of Interest. The Standards of Conduct shall be applicable to both in-house personnel and outside evaluators serving on the technical evaluation panel.

(e) *Continuity of evaluation process.* (1) The technical evaluation panel is responsible for evaluating the original proposals, making recommendations to the chairperson regarding clarifications and deficiencies of proposals, and, if required by the contracting officer, assisting the contracting officer during discussions and negotiations, and reviewing supplemental, revised and/or "best and final" offers. To the extent possible, the same evaluators should be available throughout the entire evaluation and selection process to ensure continuity and consistency in the treatment of proposals. The following are examples of circumstances when it would *not* be necessary for the technical evaluation panel to evaluate revised proposals submitted during the acquisition:

(i) The answers to questions do not have a substantial impact on the proposal (see 315.609(i));

(ii) The "best and final" offers are not materially different from the original proposals; or

(iii) The rankings of the offerors are not affected because the revisions to the proposals are relatively minor.

(2) The chairperson, with the concurrence of the contracting officer, may decide not to have the panel evaluate the revised proposals. Whenever this decision is made, it must be fully documented by the chairperson and approved by the contracting officer.

(3) When technical evaluation panel meetings are considered necessary by the contracting officer, the attendance of evaluators is mandatory. When the chairperson determines that an evaluator's failure to attend the meetings is prejudicial to the evaluation, the chairperson shall replace the individual after discussing the situation with the contracting officer and obtaining his/her concurrence and the approval of the program official responsible for appointing the panel members (see 315.608-71(b)(4)).

(4) Whenever continuity of the evaluation process is not possible, and either new evaluators are selected or a reduced panel is decided upon, each proposal which is being reviewed at any stage of the acquisition shall be reviewed at that stage by all members of the revised panel unless it is impractical to do so because of the receipt of an unusually large number of proposals.

(f) *Use of outside evaluators.* (1) The technical evaluation panel shall be composed of Government employees except when outside evaluators possess a required expertise which is not available within the Government, or as required by law.

(2) The National Institutes of Health (NIH) and the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) are required to have a peer review of research and development contracts in accordance with Pub. L. (Pub. L.) 93-352 as amended by Pub. L. 94-63; 42 U.S.C. 289 1-4. This legislation requires peer review of projects and proposals, and not more than one-fourth of the members of a peer review group may be officers or employees of the United States. NIH and ADAMHA are therefore exempt from the provisions of 315.608-71 to the extent that 42 U.S.C. 289 1-4 applies.

[50 FR 23130, May 31, 1985, and 50 FR 38004, Sept. 19, 1985, as amended at 53 FR 15563, May 2, 1988]

315.608-72 Procedures for handling and disclosing proposals.

(a) The procedures and notice specified in FAR 15.413-2 and 315.413-2 shall be used in handling solicited proposals and for disclosing proposals outside the Government for evaluation purposes. (For unsolicited proposals, see FAR 15.509 and 315.509.)

(b) Decisions to disclose proposals outside the Government for evaluation purposes shall be made by the chief official having programmatic responsibility for the acquisition, after consultation with the contracting officer and in accordance with operating division procedures. The decision to disclose either a solicited or unsolicited proposal outside the Government for the purpose of obtaining an evaluation shall take into consideration the avoidance of organizational conflicts of interest and any competitive relationship between the submitter of the proposal and the prospective evaluator(s).

(c) When it is determined to disclose a solicited proposal outside the Government for evaluation purposes, the following or similar conditions shall be included in the written agreement with the evaluator(s) prior to disclosure (see FAR 15.413-2(f) and 315.413-2(f)). Also, a review must be made to ensure that the notice required by FAR 15.413-2(e) is affixed to the proposal before it is disclosed to the evaluator(s).

CONDITIONS FOR EVALUATING PROPOSALS

The evaluator agrees to use the data (trade secrets, business data, and technical data) contained in the proposal only for evaluation purposes.

This requirement does not apply to data obtained from another source without restriction.

Any notice or legend placed on the proposal by either the Department or the submitter of the proposal shall be applied to any reproduction or abstract provided to the evaluator or made by the evaluator. Upon completion of the evaluation, the evaluator shall return the Government-furnished copy of the proposal or abstract, and all copies thereof, to the Departmental office which initially furnished the proposal for evaluation.

Unless authorized by the Department's initiating office, the evaluator shall not contact the submitter of the proposal concerning any apsects of its contents.

The evaluator will be obligated to obtain commitments from its employees and subcontractors, if any, in order to effect the purposes of these conditions.

[50 FR 23131, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608-73 Receipt of proposals.

(a) After the closing date set by the solicitation for the receipt of proposals, the contracting officer will use a transmittal memorandum to forward the technical proposals to the project officer or chairperson for evaluation. The business proposals will be retained by the contracting officer for evaluation (see 315.608-77).

(b) The transmittal memorandum to the chairperson shall include at least the following:

(1) A list of the names of the organizations submitting proposals;

(2) A reference to 315.604(d) on the need to preserve the integrity of the source selection process;

(3) A requirement for a technical evaluation report in accordance with 315.608-76; and

(4) The establishment of a date for receipt of the technical evaluation report.

[50 FR 23131, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608-74 Convening the technical evaluation panel.

(a) Normally, the technical evaluation panel will convene to evaluate the proposals. However, there may be situations when the contracting officer determines that it is not feasible for the panel to convene. Whenever this decision is made, care must be taken to assure that the technical review is closely monitored to produce acceptable results.

(b) When a panel is convened, the chairperson is responsible for the control of the technical proposals provided to him/her by the contracting officer for use during the evaluation process. The chairperson will generally distribute the technical proposals at the initial panel meeting and will establish procedures for securing the proposals whenever they are not being evaluated to insure their confidentiality. After the evaluation is complete, all proposals must be returned to the contracting officer, destroyed or filed in an appropriate manner to maintain the confidential nature of the data.

(c) The contracting officer shall address the initial meeting of the panel and state the basic rules for conducting the evaluation. The contracting officer shall provide written guidance to the panel if he/she is unable to attend the initial panel meeting. The guidance should include:

(1) An explanation of conflicts of interest (see 315.608-71(d));

(2) The necessity to read and understand the solicitation, especially the statement of work and evaluation criteria, prior to reading the proposals;

(3) The need for evaluators to restrict the review to only the solicitation and the contents of the technical proposals;

(4) The need for each evaluator to review all the proposals;

(5) The need to watch for ambiguities, inconsistencies, errors, and deficiencies which should be surfaced during the evaluation process;

(6) An explanation of the evaluation process and what will be expected of the evaluators throughout the process;

(7) The need for the evaluators to be aware of the requirement to have complete written documentation of the individual strengths and weaknesses which affect the scoring of the proposals; and

(8) An instruction directing the evaluators that, until the award is made, information concerning the acquisition must not be disclosed to any person not directly involved in the evaluation process.

[50 FR 23131, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608-75 Rating and ranking of proposals.

The evaluators will individually read each proposal, describe tentative strengths and weaknesses, and develop preliminary scores in relation to each evaluation criterion set forth in the solicitation. The evaluators will use the rating sheets either in the technical evaluation plan or approved by the contracting officer when a technical evaluation plan is not required (see 315.608-70). After this has been accomplished, the evaluators shall discuss in detail the individual strengths and weaknesses described by each evaluator and, if possible, arrive at a common understanding of the major strengths and weaknesses and the potential for correcting each offeror's weakness(es). Each evaluator will score each proposal, and then the technical evaluation panel will collectively rank the proposals. Generally, ranking will be determined by adding the numerical scores assigned to the evaluation criteria and finding the average for each offeror. The evaluators should then identify whether each proposal is acceptable or unacceptable. Predetermined cutoff scores shall not be employed.

[50 FR 23131, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608-76 Technical evaluation report.

A technical evaluation report shall be prepared and furnished to the contracting officer by the chairperson and maintained as a permanent record in the contract file. The report must reflect the ranking of the proposals and identify each proposal as acceptable or unacceptable in accordance with 315.608-75. The report must also include a narrative evaluation specifying the strengths and weaknesses of each proposal, a copy of each rating sheet, and any reservations, qualifications, or areas to be addressed that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal must be included. The report should also include specific points and questions which are to be raised in discussions or negotiations.

[50 FR 23132, May 31, 1985, and 50 FR 38004, Sept. 19, 1985]

315.608-77 Evaluation of business proposals.

(a) The contracting officer shall evaluate the business proposals concurrently with the evaluation of the technical proposals. The contracting officer must adhere to the requirements for cost or price analysis included in FAR 15.805-1 for each business proposal in the competitive range. An audit report may be required in accordance with FAR 15.805-5 and 315.805-5. The contracting officer must determine the extent of analysis in each case depending on the amount of the proposal, the technical complexity and related cost or price, and cost realism. The contracting officer should request the project officer to analyze such items as the number of labor hours proposed for various labor categories; the mix of labor hours and categories of labor in relation to the technical requirements of the project; the kinds and quantities of material, equipment, and supplies; types, numbers, and hours/days of proposed consultants; logic of proposed subcontracting; analysis of the travel proposed including number of trips, locations, purpose, and travelers; and kinds and quantities of data processing. The project officer shall provide his/her opinion as to whether these elements are necessary and reasonable for efficient contract performance. Exceptions to proposed elements shall be supported by adequate rationale to allow for effective negotiations. The contracting officer should also request the assistance of a cost/price analyst when considered necessary. In all cases, the negotiation memorandum (see 315.672) must include the rationale used in determining that the price or cost is fair and reasonable.

(b) The contracting officer must appraise the management capability of the offeror to perform the required work in a timely manner. In making this appraisal, the contracting officer should consider factors such as the offeror's management organization, past performance, reputation for reliability, availability of the required facilities, and cost controls. This information is to be used by the contracting officer to determine the offeror's responsibility.

[50 FR 23132, May 31, 1975, and 50 FR 38004, Sept. 19, 1985]

315.609 Competitive range.

(a) A proposal must be included in the competitive range unless there is no real possibility that it can be improved to the point where it becomes the *most* acceptable.

(e) In certain circumstances, when deciding which proposals should be included in the competitive range, the contracting officer may request that the technical evaluation panel review the cost or price data. Typical situations which may necessitate this review include a suspected "buy-in," large differences in cost or price among the proposals, proposals receiving high technical ratings which have relatively high costs, and proposals receiving low technical ratings which have relatively low costs. The resultant comparison of cost or price to technical factors and the determination of cost or price realism should assist the contracting officer in deciding which proposals are to be included in the competitive range.

(f) All determinations regarding the inclusion or exclusion of proposals in the competitive range must be completely documented, including the salient reasons for the determinations, and set forth in the negotiation memorandum.

(g) Some of the factors which the contracting officer should consider in determining the competitive range are:

(1) The relative importance of cost or price as compared to technical factors in accordance with the solicitation provisions required in 315.406-5(c);

(2) The susceptibility of significantly reducing a proposal with an unreasonable high price or cost without undermining the technical merit if the offeror otherwise has a reasonable chance to receive an award; and

(3) The likelihood of reducing cost or price of a proposal which exceeds the Government's requirements.

(h) The contacting officer shall conduct a thorough review of the technical evaluation report to be assured that:

(1) All determinations of unacceptability are supported by concrete and comprehensive statements that are factual and convincing and are consistent with the evaluation criteria set forth in the solicitation. Every statement should be reviewed carefully to eliminate any doubts as to the unacceptability of a proposal;

(2) All recommendations to exclude proposals from the competitive range are supported by persuasive rationale and sufficient facts to substantiate a judgment that meaningful discussions are not possible or there is no reasonable chance of the proposal being selected for award;

(3) Those cases where only one organization is found to be technically acceptable are fully scrutinized; and

(4) Unacceptable proposals contain "information" deficiencies which are so material as to preclude any possibility of upgrading the proposal to a competitive level except through major revisions and additions which would be tantamount to the submission of another proposal.

(i) The contracting officer and project officer should discuss the uncertainties and/or deficiencies that are included in the technical evaluation report for each proposal in the competitive range. Technical questions should be developed by the project officer and/or the technical evaluation panel and should be included in the technical evaluation report. The management and cost or price questions should be prepared by the contracting officer with assistance from the project officer and/or panel as required. The method of requesting offerors in the competitive range to submit the additional information will vary depending on the complexity of the questions, the extent of additional information requested, the time needed to analyze the responses, and the time frame for making the award. However, to the extent practicable, all questions and answers should be in writing. Each offeror in the competitive range shall be given an equitable period of time for preparation of responses to questions to the extent practicable. The questions should be developed so as to disclose the ambiguities, uncertainties, and deficiencies of the offeror (see FAR 15.610(c)).

315.610 Written or oral discussions.

(b) The contracting officer, with the support of personnel who evaluated the technical proposals, and, if necessary, cost analysts, attorneys, etc., must conduct written or oral discussions with all responsible offerors within the competitive range.

(d) Careful judgment must be exercised in determining the extent of discussions. In some cases, more than one round of discussions with all the offerors within the competitive range may be required. The time available, the expense and administrative limitations, and the complexity, size, and significance of the acquisition should all be considered in deciding on the type, duration, and depth of the discussions.

315.611 Best and final offers.

(b)(5) Notice that confirmation of a prior offer should be specifically stated as a final offer; and

(6) Notice that all revisions to former offers should be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet, and should be fully documented.

(c) "Best and final" offers are subject to a final evaluation of price or cost and other salient factors by the contracting officer and project officer with assistance from a cost/price analyst, and an evaluation of technical factors by the technical evaluation panel, as necessary. Proposals may be technically rescored and reranked by the technical evaluation panel and a technical evaluation report prepared. To the extent practicable, the evaluation shall be performed by the same evaluators who reviewed the original proposals (see 315.670—).

(e) Of particular importance in the award of research or development contracts, including those with educational institutions, is the competence of key personnel in the specific field of science or technology involved, as reflected in the proposal. However, awards should not be made for research and development capabilities that exceed those needed for the successful performance of the particular project.

315.670 Negotiation with the selected source.

(a) After selection of the successful proposal, a limited negotiation with the selected offeror may be conducted if deemed necessary. However, no factor which could have any effect on the selection process may be introduced into the negotiation after the common cutoff date for receipt of best and final offers. The negotiation shall not in any way prejudice the competitive interests or right of the unsuccessful offerors. Negotiations with the selected offeror shall be restricted to definitizing the final agreement on terms and conditions; e.g., assuming none of these factors were involved in the selection process, negotiation could include such topics as payment provisions, patent rights, rights in data, property provisions, labor rates, indirect cost rates, and fees. Prior to conducting the limited negotiation, the contracting officer shall approve a written determination citing both the specific issues to be discussed and the rationale showing that the negotiations shall not have any effect on the selection process.

(b) Caution must be exercised by the contracting officer to insure that the negotiation is not used to change the requirement contained in the solicitation, nor to make any other changes which would impact on the source selection decision. Whenever a material change occurs in the requirements as a result of the negotiation, the competition must be reopened and all offerors submitting "best and final" offers must be given an opportunity to resubmit proposals based on the revised requirements. Whenever there is a question as to whether a change is material, the contracting officer should obtain the advice of technical personnel and legal counsel before reopening the competition. Significant changes in the offeror's cost proposal may also necessitate a reopening of competition if such changes alter the factors involved in the original selection process.

(c) Should negotiations beyond those specified in (a) above be required for any reason, discussions must be reopened with all offerors submitting "best and final" offers.

(d) Upon completion of the negotiation, the contracting officer shall obtain a confirmation letter from the successful offeror which includes any revisions to the technical proposal, the agreed to price or cost, and, as applicable, a certificate of current cost or pricing data.

[49 FR 13979, Apr. 9, 1984, 49 FR 36110, Sept. 14, 1984]

315.671 Post negotiation contract preparation and award.

(a) The contracting officer must perform the following actions after negotiations have been completed:

(1) Prepare the negotiation memorandum in accordance with 315.672;

(2) Prepare the contract containing all agreed to terms and conditions and clauses required by law or regulation;

(3) Include in the contract file the pertinent documents referenced in FAR 4.803; and

(4) Obtain the appropriate approval of proposed contract awards in accordance with Subpart 304.71 and contracting activity procedures.

(b) After receiving the required approvals, the contract should be transmitted to the prospective contractor for signature. The prospective contractor must be informed that the contract is not effective until accepted by the contracting officer.

(c) The contract shall not be issued until the finance office certifies that the funds are available for obligation.

315.672 Preparation of negotiation memorandum.

The negotiation memorandum or summary of negotiations is a complete record of all actions leading to award of a contract and is prepared by the contract negotiator. It should be in sufficient detail to explain and support the rationale judgments, and authorities upon which all actions were predicated. The memorandum will document the negotiation process and reflect the negotiator's actions, skills, and judgments in concluding a satisfactory agreement for the Government. Negotiation memorandums shall contain discussion of the following or a statement of nonapplicability; however, information already contained in the contract file need not be reiterated. A reference to the document which contains the required information is satisfactory.

(a) *Description of articles and services and period of performance.* A description of articles and services, quantity, unit price, total contract amount, and period of contract performance should be set forth (if Supplemental Agreement—show previous contract amount as revised, as well as information with respect to the period of performance).

(b) *Acquisition planning.* Summarize any acquisition planning activities that have taken place. Include items such as meetings with program and staff personnel and the development of acquisition planning schedules.

(c) *Synopsis of proposed acquisition.* A statement as to whether the acquisition has or has not been publicized in accordance with FAR Subpart 5.2. A brief statement of explanation should be included with reference to the specific basis for exemption under the FAR, if applicable.

(d) *Contract type.* Provide sufficient detail to support the type of contractual instrument recommended for the acquisition and cite any required D & F. If the contract is a cost-sharing type, explain the essential cost-sharing features.

(e) *Extent of competition.* The extent to which full and open competition was solicited and obtained must be discussed. The discussion shall include the date of solicitation, sources solicited, and solicitation results. If a late proposal was received, discuss whether or not the late proposal was evaluated and the rationale for the decision. If the acquisition is to be awarded without full and open competition, discuss the rationale for the decision.

(f) *Technical evaluation.* Summarize the results presented in the technical evaluation report and delineate the basis of acceptability or unacceptability of the proposals from a technical standpoint. Discussion should be in nontechnical terms.

(g) *Business evaluation.* Summarize the results presented in the business report and delineate the basis for the determination of acceptability or unacceptability of the buinsess proposals.

(h) *Competitive range.* If full and open competition, describe how the zone of consideration or competitive range was determined and state the offerors who were included in the competitive range and the ones who were not. Explain why any offeror who submitted a technically acceptable proposal was not included in further discussions. Comment on any changes made in the offeror's proposal as a result of the discussions.

(i) *Cost breakdown and analysis.* Include a complete cost breakdown together with the negotiator's analysis of the estimated cost by individual cost elements. The negotiator's analysis should contain such information as:

(1) A comparison of cost factors proposed in the instant case with actual cost factors used in earlier contracts, using the same cost centers of the same supplier or cost centers or other sources having recent contracts for the same or similar item.

(2) Any pertinent Government-conducted audit of the proposed contractor's records of any pertinent cost advisory report (see FAR 15.805).

(3) Any pertinent technical evaluation inputs as to necessity, allocability and reasonableness of labor, material and other direct expenses.

(4) Any other pertinent information to fully support the basis for and rationale of the cost analysis.

(5) If the contract is an incentive type, discuss the rationale for the following:

(i) Cost-plus-award-fee.

(A) Base fee.

(B) Maximum fee.

(C) Award fee.

(ii) Cost-plus-incentive-fee.

(A) Minimum fee.

(B) Target fee.

(C) Maximum fee.

(D) Incentives relative to performance and/or delivery.

(E) Sharing ratios.

(iii) Fixed-price incentives.

(A) Target profit.

(B) Target price.

(C) Ceiling price.

(D) Sharing rations.

(E) Incentives relative to performance and/or delivery.

(6) A justification of the reasonableness of the proposed contractor's estimated profit or fixed fee, considering such factors as any competitive elements, established efficiency or performance, extent of the risk assumed by the proposed contractor, character of the proposed contractor's normal business, the extent of subcontracting in the instant case and the reasons, capital employed, and other factors as are appropriate, including type of organization.

(j) *Government-furnished property and Government-provided facilities.* With respect to Government-furnished material or Government-provided facilities, equipment, tooling, or other property, include the following: (A separate D & F is required for facilities construction.)

(1) Where no property is to be provided, a statement to that effect.

(2) Where property is to be provided, a full description, the estimated dollar value, the basis of price comparison with competitors, and the basis of rental charge, if rental is involved.

(3) Where the furnishing of any property or the extent has not been determined and is left open for future resolution, a detailed explanation.

(k) *Negotiations.* Include a statement as to the date and place negotiations were conducted, and identify members of both the Government and contractor negotiating teams by area of responsibility. Include negotiation details relative to the statement of work, terms and conditions, and special provisions. The results of cost or price negotiations must include the information required by FAR 31.109 and 15.808. In addition, if cost or pricing data was required to be submitted and certified, the negotiation record must also contain the extent to which the contracting officer relied upon the factual cost or pricing data submitted and used in negotiating the cost or price.

(l) *Other considerations.* Include coverage of areas such as:

(1) Financial data with respect to a contractor's capacity and stability.

(2) Determination of contractor responsibility.

(3) Details as to why the method of payment, such as progress payment, advance payment, etc., is necessary. Also cite any required D & F's.

(4) Information with respect to obtaining of a certificate of current cost or pricing data.

(5) Other required special approvals, such as those referenced in 307.105-2.

(6) If the contract represents an extension of previous work, the status of funds and performance under the prior contract(s) should be reflected. Also, a determination should be made that the Government has obtained enough actual or potential value from the work previously performed to warrant continuation with the same contractor. (Project officer should furnish the necessary information.)

(7) If the contract was awarded by full and open competition state where the unsuccessful offerors' proposals are filed.

(8) State that equal opportunity provisions of the proposed contract have been explained to the contractor, and it is aware of its responsibilities. Also state whether or not a clearance is required.

(9) If the contract is for services, a statement must be made, in accordance with FAR 37.103 and 337.103, that the services to be acquired are nonpersonal in nature.

(m) *Terms and conditions.* Identify the general provisions and any special clauses and conditions that are contained in the contract, such as option arrangements, incremental funding, anticipatory costs, deviations from the standard clauses, etc. The basis and rationale for inclusion of any special terms and conditions must be stated and, where applicable, the document which granted approval for its use identified.

(n) *Recommendation.* A brief statement setting forth the recommendations for award.

(o) *Signature.* The memorandum must be signed by the contract negotiator who prepared the memorandum.

[49 FR 13979, Apr. 9, 1984, as amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

Subpart 315.8—Price Negotiation

315.804 Cost or pricing data.

[51 FR 44294, Dec. 9, 1986]

315.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(i) *Waiver for exceptional cases.* The authority referenced in FAR 15.804-3(i) may be delegated to the principal official responsible for acquisition.

[51 FR 44294, Dec. 9, 1986]

315.805 Proposal analysis.

315.805-5 Field pricing support.

(2) When some or all information sufficient to determine the reasonableness of the proposed cost or price is already available or can be obtained by phone from the cognizant audit agency, contracting officers may request less-than-complete field pricing support (specifying in the request the information needed) or may waive in writing the requirement for audit and field pricing support by documenting the file to indicate what information is to be used instead of the audit report and the field pricing report.

(c)(1) When initiating audit and field pricing support, the contracting officer shall do so by sending a request to the cognizant administrative contracting officer (ACO), with an information copy to the cognizant audit office. When field pricing support is not available, the contracting officer shall initiate an audit by sending, in accordance with agency procedures, two (2) copies of the request to the OIG Office of Audits' Regional Audit Director. In both cases, the contracting officer shall, in the request:

(i) Prescribe the extent of the support needed;

(ii) State the specific areas for which input is required;

(iii) Include the information necessary to perform the review (such as the offeror's proposal and the applicable portions of the solicitations, particularly those describing requirements and delivery schedules);

(iv) Provide the complete address of the location of the offeror's financial records that support the proposal;

(v) Identify the office having audit responsibility if other than an HHS Regional Audit Office; and

(vi) Specify a due date for receipt of a verbal report to be followed by a written audit report. (If the time available is not adequate to permit satisfactory coverage of the proposal, the auditor shall so advise the contracting officer and indicate the additional time needed.) Normally, the Office of Audits will need 30 days after receipt of the proposal for submission of oral results. However, the Office of Audits' ability to conduct reviews by the due date will be influenced by the OPDIV's ability to properly plan its acquisitions. If the Office of Audits requires additional time to conduct the review, the contracting officer has the option, at the time the auditor acknowledges receipt of the request, to accept the revised due date or cancel the request and use cost advisory services within the agency to satisfy the requirement. In such cases, the contracting officer shall immediately advise the OIG/OA/Regional Audit Director and the OIG/OA/Division of Audit Coordination (OIG/OA/DAC) of the revised due date or cancellation of the request.

(4) One copy of the audit request letter that was submitted to the Regional Audit Director and a complete copy of the contract price proposal shall be submitted to OIG/OA/DAC.

(5) Whenever, an audit review has been conducted by the Office of Audits, two (2) copies of the memoran-

dum of negotiation shall be forwarded to OIG/OA/DAC by the contracting officer (see FAR 15.808(b)).

Subpart 315.9—Profit

315.900 Scope of subpart.

This subpart—

(c) Prescribes a structured approach for establishing the profit or fee portion of the Government prenegotiation objective in all contracts requiring cost analysis except as stated in 315.905-70(b). The profit analysis factors set forth at FAR 15.905 shall be used in all excepted contracts requiring cost analysis.

315.905-70 Structured approach.

(a) *General.* (1) The structured approach for determining profit or fee (hereafter referred to as profit) provides contracting officers with a technique that will ensure consideration of the relative value of the appropriate profit factors described in 315.905-71 in the establishment of a profit objective for the conduct of negotiations. The contracting officer's analysis of these profit factors is based on information available to him/her prior to negotiations. Such information is furnished in proposals, audit data, assessment reports, preaward surveys and the like. The structured approach also provides a basis for documentation of this objective, including an explanation of any significant departure from this objective in reaching an agreement. The extent of documentation should be directly related to the dollar value and complexity of the proposed acquisition.

(2) The negotiation process does not require agreement on either estimated cost elements or profit elements. The profit objective is a part of an overall negotiation objective which, as a going-in objective, bears a distinct relationship to the cost objective and any proposed sharing arrangement. Since profit is merely one of several interrelated variables, the Government negotiator generally should not complete the profit negotiation without simultaneously agreeing on the other variables. Specific agreement on the exact weights or values of the individual profit factors is not required and should not be attempted.

(b) *Exceptions.* (1) The profit-analysis factors set forth at FAR 15.905 shall be used for establishing profit objectives under the following listed circumstances. Generally, it is expected that this method will be supported in a manner similar to that used in the structured approach (profit factor breakdown and documentation of the profit objective); however, factors within FAR 15.905 considered inapplicable to the acquisition will be excluded from the profit objective.

(i) Contracts not expected to exceed $100,000;

(ii) Architect-engineer contracts;

(iii) Management contracts for operation and/or maintenance of Government facilities;

(iv) Construction contracts;

(v) Contracts primarily requiring delivery of material supplies by subcontractors;

(vi) Termination settlements; and

(vii) Cost-plus-award-fee contracts (However, contracting officers may find it advantageous to perform a structured profit analysis as an aid in arriving at an appropriate fee arrangement).

(2) Other exceptions may be made in the negotiation of contracts having unusual pricing situations. Such exceptions shall be justified in writing by the contracting officer in situations where the structured approach is determined to be unsuitable.

(c) *Limitation.* The maximum profit objective shall be the percentage allowed pursuant to statute or regulation (see FAR 15.903(d)).

(d) *Profit objective.* (1) A profit objective is that part of the estimated contract price objective or value which, in the judgment of the contracting officer, constitutes an appropriate amount of profit for the acquisition being considered. This objective should realistically reflect the total overall task to be performed and the requirements placed on the contractor.

(2) Development of a profit objective should not begin until the following actions have been accomplished:

(i) A thorough review of proposed contract work;

(ii) A review of all available knowledge regarding the contractor pursuant to FAR Subpart 9.1, including audit data, preaward survey reports and financial statements, as appropriate; and

(iii) An analysis of the contractor's cost estimate and comparison with the Government's estimate or projection of cost.

315.905-71 Profit factors.

(a) The following factors shall be considered in all cases in which profit is to be negotiated. The weight ranges listed after each factor shall be used in all instances where the structured approach is used.

Profit factors	Weight ranges (percent)
Contractor effort:	
Material acquisition	1 to 5
Direct labor	4 to 15
Overhead	4 to 9
General management (G&A)	4 to 8
Other costs	1 to 5
Other factors:	
Cost risk	0 to 7
Investment	−2 to +2
Performance	−1 to +1
Socioeconomic programs	−.5 to +.5
Special situations	

(b) Under the structured approach, the contracting officer shall first measure "Contractor Effort" by the assignment of a profit percentage within the designated weight ranges to each element of contract cost recognized by the contracting officer. The amount calculated for the cost of money for facilities capital is not to be included for the computation of profit as part of the cost base.

(c) The suggested categories under "Contractor Effort" are for reference purposes only. Often individual proposals will be in a different format, but since these categories are broad and basic, they provide sufficient guidance to evaluate all other items of cost.

(d) After computing a total dollar profit for "Contractor Effort," the contracting officer shall then calculate the specific profit dollars assigned for cost risk, investment, performance, socioeconomic programs, and special situations. This is accomplished by multiplying the total Government Cost Objective, exclusive of any cost of money for facilities capital, by the specific weight assigned to the elements within the "Other Factors" category. Form HHS-674, Structured Approach Profit/Fee Objective, should be used, as appropriate, to facilitate the calculation of this profit objective. Form HHS-674 is illustrated in 353.301-674.

(e) In making a judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as set forth in 315.905-72 and 315.905-73.

(f) The structured approach was designed for arriving at profit objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and nonprofit organizations, the structured approach can be used as a basis for arriving at profit objectives for nonprofit organizations. Therefore, the structured approach, as modified in paragraph (f)(2) below, shall be used to establish profit objectives for nonprofit organizations.

(1) For purposes of this section, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(2) For contracts with nonprofit organizations where profit is involved, an adjustment of up to 3 percentage points will be subtracted from the total profit objective percentage. In developing this adjustment, it will be necessary to consider the following factors:

(i) Tax position benefits;

(ii) Granting of financing through advance payments; and

(iii) Other pertinent factors which may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

[49 FR 13979, Apr. 9, 1984, as amended at 53 FR 15563, May 2, 1988]

315.905-72 Contractor effort.

(a) *General.* Contractor effort is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirement in an efficient manner. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what the contractor must do to accomplish a conversion of ideas and material into the final service or product called for in the contract. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. A major consideration, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed, and the unusual demands of the contract, such as whether the project involves a new approach unrelated to existing technology and/or equipment or only refinements to these items. The evaluation of this factor requires an anaylsis of the cost content of the proposed contract as follows:

(1) *Material acquisition.* (Subcontracted items, purchased parts, and other material.) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required subcontracted items, purchased parts, material or services. The contracting officer shall determine whether the contractor will obtain the items or services by routine order from readily available sources or by detailed subcontracts for which the prime contractor will be required to develop complex specifications. Consideration shall also be given to the managerial and technical efforts necessary for the prime contractor to select subcontractors and to perform subcontract administration functions. In application of this criterion, it should be recognized that the contribution of the prime contractor to its purchasing program may be substantial. Normally, the lowest unadjusted weight for direct material is 2 percent. A weighting of less than 2 percent would be appropriate only in unusual circumstances when there is a minimal contribution by the contractor.

(2) *Direct Labor* (Professional, service, manufacturing and other labor). Analysis of the various labor categories of the cost content of the contract should include evaluation of the comparative quality and quantity of professional and semiprofessional talents, manufacturing and service skills, and experience to be employed. In evaluating professional and semiprofessional labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce talent needed in contrast to nonprofessional effort. The assessment should consider the contribution this talent will provide toward the achievement of contract objectives. Since nonprofessional labor is relatively plentiful and rather easily obtained by the contractor and is less critical to the successful performance of contract objectives, it cannot be weighted nearly as high as professional or semiprofessional labor. Service contract labor should be evaluated in a like manner by assigning higher weights to engineering or professional type skills and lower weights to semiprofessional or other type skills required for contract performance. Similarly, the variety of manufacturing and other categories of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, categories of labor (i.e., quality control, receiving and inspection, etc.) which do not fall within the definition for professional, service or manufacturing labor may be categorized as appropriate. However, the same evaluation considerations as outlined above will be applied.

(3) *Overhead and general management* (G&A). (i) Analysis of these overhead items of cost should include the evaluation of the makeup of these expenses and how much they contribute to contract performance. To the extent practicable, analysis should include a determination of the amount of labor within these overhead pools

and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit considerations that they would receive if they were treated as direct labor. The other elements of these overhead pools should be evaluated to determine whether they are routine expenses, such as utilities and maintenance, and hence given lesser profit consideration, or whether they are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools will be the profit consideration given the pools as a whole. The procedure for assigning relative values to these overhead expenses differs from the method used in assigning values of the direct labor. The upper and lower limits assignable to the direct labor are absolute. In the case of overhead expenses, individual expenses may be assigned values outside the range as long as the composite ratio is within the range.

(ii) It is not necessary that the contractor's accounting system break down overhead expenses within the classifications of research overhead, other overhead pools, and general administrative expenses, unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system reflects only one overhead rate on all direct labor need not change its system (if CAS exempt) to correspond with the above classifications. The contracting officer, in an evaluation of such a contractor's overhead rate, could break out the applicable sections of the composite rate which could be classified as research overhead, other overhead pools, and general and administrative expenses, and follow the appropriate evaluation technique.

(iii) Management problems surface in various degrees and the management expertise exercised to solve them should be considered as an element of profit. For example, a contract for a new program for research or an item which is on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward because many of the problems should have been solved. In any event, an evaluation should be made of the underlying managerial effort involved on a case-by-case basis.

(iv) It may not be necessary for the contracting officer to make a separate profit evaluation of overhead expenses in connection with each acquisition action for substantially the same project with the same contractor. Where an analysis of the profit weight to be assigned to the overhead pool has been made, that weight assigned may be used for future acquisitions with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or the factors discussed in (iii) above are involved.

(b) *Other costs.* Analysis of this factor should include all other direct costs associated with contractor performance (e.g., travel and relocation, direct support, and consultants). Analysis of these items of cost should include:

(1) The significance of the cost of contract performance;

(2) Nature of the cost; and

(3) How much they contribute to contract performance. Normally, travel costs require minimal administrative effort by the contractor and, therefore, usually receive a weight no greater than 1 percent. Also, the contractor may designate individuals as "consultants" but in reality these individuals may be obtained by the contractor to supplement its workforce in the performance of routine duties required by contract. These costs would normally receive a minimum weight. However, there will be instances when the contractor may be required to locate and obtain the services of consultants having expertise in such fields as medicine or human services. In these instances, the contractor will be required to expend greater managerial and technical effort to obtain such services and, consequently, such costs should receive a much greater weight.

315.905-73 Other factors.

(a) *Contract cost risk.* The contract type employed basically determines the degree of cost risk assumed by the contractor. For example, where a portion of the risk has been shifted to the Government through cost-reimbursement provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit should be less than where the contractor assumes all the risk. In developing the prenegotiation profit objective, the contracting officer will need to consider the type of contract anticipated to be negotiated and the contractor risk associated therewith when selecting the position in the weight range for profit that is appropriate for the risk to be borne by the contractor. This factor should be one of the most important in arriving at prenegotiation profit objectives.

(1) Evaluation of this risk requires a determination of:

(i) The degree of cost responsibility the contractor assumes;

(ii) The reliability of the cost estimates in relation to the task assumed; and

(iii) The complexity of the task assumed by the contractor. This factor is specifically limited to the risk of contract costs. Thus, such risks on the part of the contractor as reputation, losing a commercial market, risk of losing potential profits in other fields, or any risk which falls on the contracting office such as the risk of not acquiring a satisfactory report, are not within the scope of this factor.

(2) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-a-fixed-fee contract requiring the contractor to use its best efforts to perform a task and a firm fixed-price contract for a service or a complex item. A cost-plus-a-fixed-fee contract would reflect a minimum assumption of cost responsibility, whereas a firm fixed-price contract would reflect a complete assumption of cost responsibility. Where proper contract selection has been made, the regard for risk by contract type would usually fall into the following percentage ranges:

Percent

Cost-reimbursement type contracts—0-3
Fixed-price type contracts—2-7

(3) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior experience assists the contractor in preparing reliable cost estimates on new acquisitions for similar related efforts. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(4) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult or easy, regardless of the type of contract.

(5) Contractors are likely to assume greater cost risk only if contracting officers objectively analyze the risk incident to proposed contracts and are willing to compensate contractors for it. Generally, a cost-plus-fixed fee contract will not justify a reward for risk in excess of 0.5 percent, nor will a firm fixed-price contract justify a reward of less than the minimum in the structured approach. Where proper contract-type selection has been made, the reward for risk, by contract type, will usually fall into the following percentage ranges:

(i) Type of contract and percentage ranges for profit objectives developed by using the structured approach for research and development and manufacturing contracts:

Percent

Cost-plus-fixed fee—0 to 0.5
Cost-plus-incentive fee:
  With cost incentive only—1 to 2
  With multiple incentives—1.5 to 3
Fixed-price-incentive:
  With cost incentive only—2 to 4
  With multiple incentives—3 to 5
Prospective price redetermination—3 to 5
Firm fixed-price—5 to 7

(ii) Type of contract and percentage ranges for profit objectives developed by using the structured approach for service contracts:

Percent

Cost-plus-fixed fee—0 to 0.5
Cost-plus-incentive fee—1 to 2
Fixed-price incentive—2 to 3
Firm fixed-price—3 to 4

(6) These ranges may not be appropriate for all acquisitions. For instance, a fixed-price incentive contract that is closely priced with a low ceiling price and high incentive share may be tantamount to a firm fixed-price contract. In this situation, the contracting officer may determine that a basis exists for high confidence in the reasonableness of the estimate and that little opportunity exists for cost reduction without extraordinary efforts. On the other hand, a contract with a high ceiling and low incentive formula can be considered to contain cost-plus-incentive-fee contract features. In this situation, the contracting officer may determine that the Government is retaining much of the contract cost responsibility and that the risk assumed by the contractor is minimal. Similarly, if a cost-plus-incentive-fee contract includes an unlimited downward (negative) fee adjustment on cost control, it could be comparable to a fixed-price-incentive contract. In such a pricing environment, the contracting officer may determine that the Government has transferred a greater amount of cost responsibility to the contractor than is typical under a normal cost-plus-incentive-fee contract.

(7) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It could cause risk to increase or decrease in terms of both cost and performance. This consideration should be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation may, as a result, be below the range which would otherwise apply for the contract type being proposed. The contract cost risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts without any substantial transfer of contractor's risk.

(8) In making a contract cost risk evaluation in an acquisition action that involves definitization of a letter contract, unpriced change orders, and unpriced orders under BOA's, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable, the determination of profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances—not just the portion of costs incurred or percentage of work completed prior to definitization.

(9) Time and material and labor hour contracts will be considered to be cost-plus-a-fixed-fee contracts for the purpose of establishing profit weights unless otherwise exempt under 315.905-70(b) in the evaluation of the contractor's assumption of contract cost risk.

(b) *Investment.* HHS encourages its contractors to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. The evaluation of this factor should include an analysis of the following:

(1) *Facilities* (Including equipment). To evaluate how this factor contributes to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors who furnish their own facilities which significantly contribute to lower total contract costs should be provided with additional profit. On the other hand, contractors who rely on the Government to provide or finance needed facilities should receive a corresponding reduction in profit.

Cases between the above examples should be evaluated on their merits with either positive or negative adjustments, as appropriate, in profit being made. However, where a highly facilitized contractor is to perform a contract which does not benefit from this facilitization or where a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted. When applicable, the prospective contractor's computation of facilities capital cost of money for pricing purposes under CAS 414 can help the contracting officer identify the level of facilities investment to be employed in contract performance.

(2) *Payments.* In analyzing this factor, consideration should be given to the frequency of payments by the Government to the contractor. The key to this weighting is to give proper consideration to the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for advance payments and payments more frequent than monthly with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly with additional consideration given for a capital turn-over-rate on the contract which is less than the contractor's or the industry's normal capital turn-over rate.

(c) *Performance.* (Cost-control and other past accomplishments.) The contractor's past performance should be evaluated in such areas as quality of service or product, meeting performance schedules, efficiency in cost control (including need for and reasonableness of cost incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions, and management of subcontract programs. Where a contractor has consistently achieved excellent results in the foregoing areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit. Conversely a poor record in this regard should be reflected in determining what constitutes a fair and reasonable profit.

(d) *Federal socioeconomic programs.* This factor, which may apply to special circumstances or particular acquisitions, relates to the extent of a contractor's successful participation in the Government sponsored programs such as small business, small disadvantaged business, labor surplus area, and energy conservation efforts. The contractor's policies and procedures which energetically support Government socioeconomic programs and achieve successful results should be given positive considerations. Conversely, failure or unwillingness on the part of the contractor to support Government socioeconomic programs should be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(e) *Special situations.* (1) *Inventive and developmental contributions.* The extent and nature of contractor-initiated and financed independent development should be considered in developing the profit objective, provided that the contracting officer has made a determination that such effort will benefit the contract. The importance of the development in furthering health and human services purposes, the demonstrable initiative in determining the need and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources should be weighed.

(2) *Unusual pricing agreements.* Occasionally, unusual contract pricing arrangements are made with the contractor wherein it agrees to cost ceilings, e.g., a ceiling on overhead rates for conditions other than those discussed at FAR 42.707. In such circumstances, the contractor should receive favorable consideration in developing the profit objective.

(3) *Negative factors.* Special situations need not be limited to those which only increase profit levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract (e.g., products or services with commercial application).

[49 FR 13979, Apr. 9, 1984, as amended at 53 FR 15563, May 2, 1988]

315.905-74 Facilities capital cost of money.

When facilities capital cost of money (cost of capital committed to facilities) is included as an item of cost in the contractor's proposal, a reduction in the profit objective shall be made in an amount equal to the amount of facilities capital cost of money allowed in accordance with the Facilities Capital Cost-of-Money Cost Principal. If the contractor does not propose this cost, a provision must be inserted in the contract that facilities capital cost of money is not an allowable cost.

[49 FR 13979, Apr. 9, 1984, as amended at 53 FR 15563, May 2, 1988]

Subpart 315.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

315.1000 General.

Once a contract action has progressed through the evaluation process, and even after the selection of a contractor, all queries as to the relative merits of the submitted proposals shall be courteously but firmly directed to the contracting officer. All other personnel will avoid any exchange of comments with offerors.

[49 FR 13979, Apr. 9, 1984. Redesignated and amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

315.1003 Debriefing of unsuccessful offerors.

(a) Any HHS employee who receives either a written or oral request for a debriefing from an unsuccessful offeror shall immediately, without any discussion regarding the merits or deficiencies of the unsuccessful offeror's proposal, refer the request to the contracting officer. If the request is made orally, the contracting officer shall require that the request be made in writing. The contracting officer or his/her designee shall be present at all debriefings and shall review written debriefings prior to release.

(b) A debriefing is intended to: (1) Tell an unsuccessful offeror which areas of its proposal were judged to be weak and deficient and whether the weaknesses or deficiencies were factors in its not having been selected; and

(2) Identify the factors which were the basis for selection of the successful contractor. If the quality of the successful offeror's proposal to satisfy the mission requirement was the basis, the unsuccessful offeror should be so informed, and given a general comparison of significant areas, but not a point-by-point comparison of all the elements considered in the evaluation criteria. If the successful offeror was selected on the basis of cost, the unsuccessful offeror should be told that was the case. If selection was based on other factors, they should be specified.

(d) If an unsuccessful offeror feels that its failure to obtain the award was not justified, it will rely, at least in part, on the information given in the debriefing to determine whether it should seek recourse. Accordingly, it is essential that a debriefing be conducted in a scrupulously fair, objective, and impartial manner, and that the information given the unsuccessful offeror be absolutely factual and consistent with the findings of the contracting officer and the basis on which the award was made.

(e) In some cases, it may be necessary to arrange informal debriefings for an unsuccessful offeror's personnel by departmental technical evaluators. This determination will be made by, and meeting arrangements will be the responsibility of, the contracting officer.

(f) It is very important that all departmental personnel engaged in the evaluation and selection processes be aware of the policies and procedures in FAR Subpart 15.10 and this Subpart 315.10. Detailed and complete records of the acquisition will be maintained by key technical and contracting personnel in a manner which will facilitate either a written or an oral debriefing of any unsuccessful offeror.

[49 FR 13979, Apr. 9, 1984. Redesignated and amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

315.1004 Protests against award.

See Subpart 333.1.

[49 FR 13979, Apr. 9, 1984. Redesignated and amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

315.1005 Discovery of mistakes.

See 314.406 and 315.607.

[49 FR 13979, Apr. 9, 1984. Redesignated at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

Subpart 315.70—Requests for Contract

315.7000 Scope of subpart.

This subpart prescribes the format and contents of the request for contract and provides procedures for the preparation and submission of the request for contract document.

315.7001 General.

The program office's preparation of the request for contract (RFC) and submission to the contracting activity finalizes the presolicitation phase of the acquisition planning process and commences the solicitation phase. The RFC is the formal document which initiates the preparation of the request for proposals by the contracting activity and sets the acquisition process in motion. It represents the results of planning by the project officer and contract negotiator and contains much of the pertinent information necessary for the development of a sound, comprehensive RFP.

315.7002 Procedures.

(a) Requests for contract are required to be prepared by the program office for all proposed negotiated acquisitions estimated to exceed $250,000.

(b) The program office should submit the RFC as early as possible to the contracting activity. The proposed period of time between the date of submission of the RFC and the date of contract award (or date of delivery of the product, service, study, etc.) should be determined by the project officer, contract negotiator, and, if necessary, the contracting officer. The amount of leadtime should be determined on a case-by-case basis and should reflect the characteristics and complexities of the individual acquisition. When lengthy and/or involved clearances or special approval are required, for example, they must be taken into account when the leadtime is determined. If a formal acquisition planning document is used, (see Subpart 307.1), the RFC should be submitted in accordance with the timetable set forth in that document. OPDIV, agency, and regional office contracting activities may prescribe specific leadtimes for submission of RFC's in their implementation of this subpart.

[49 FR 13979, Apr. 9, 1984, as amended at 53 FR 15563, May 2, 1988]

315.7003 Responsibilities.

It is the responsibility of the project officer to prepare the RFC so that it complies with the requirements of this subpart and any OPDIV, agency, or regional office guidance issued in accordance with this subpart. Prior to the submission of the RFC to the contracting activity, the head of the program office sponsoring the project shall review the RFC to ensure that all required information is provided in the prescribed format and a technical review of the statement of work has been made. The level and extent of the technical review is to be commensurate with the estimated cost, importance, and complexity of the proposed acquisition and must be thorough enough to ensure that vague and ambiguous language is eliminated, the statement of work is structured by phases or tasks, if appropriate, and methods are available for assessing the contractor's technical, cost, and delivery performances.

315.7004 Transmittal.

The RFC will be conveyed to the contracting activity by use of a covering memorandum or other form of transmittal. The transmittal document must be signed by the head of the sponsoring program office and include both a statement attesting to the conclusiveness of the review discussed in the preceding section and a list identifying all attachments to the RFC. A standard format for the transmittal document may be prescribed by the OPDIV, agency, or regional office contracting activity.

315.7005 Format and content.

The Department does not prescribe a standard format for the RFC document, but recommends the use of a format similar to what is provided in this section. The subject areas addressed in paragraphs (a) and (b) must be included in every RFC document, whereas the areas addressed in paragraph (c) need only be included if applicable. An OPDIV, agency, or regional office contracting activity may prescribe a standard format for the RFC document and may include additional subject areas that are pertinent to that activity's needs. Some of the information to be furnished in the RFC document may be repetitive of that found in the acquisition planning document. If this information has not changed since the development of the acquisition planning document, the RFC document may either restate the information as it appears in the acquisition planning document or cross reference the applicable portion where the information appears.

(a) The RFC document must contain the following:

(1) *Purpose of contract.* A brief, general description of requirements, including the citation of the legislation which authorizes the program or project, is to be provided, along with a statement as to the intended purpose/use of the proposed contract.

(2) *Background and need.* The background history and necessity for the proposed contract are to be described. This section is to include prior, present, and planned efforts by the program office in the same or related areas, and a description of efforts by other departmental activities and Federal agencies in the same or related program areas, if known. In addition, specific project information such as the relevance or contribution to overall program objectives, reasons for the need, priority, and project overlap are to be provided.

(3) *Period of performance.* The number of months (or other time period) required for total performance, and, if applicable, for each phase of work indicated in the statement of work, is to be specified. The program office must indicate the proposed starting date and the required date of delivery for each deliverable.

(4) *Estimated cost and fund citation.* The project officer's estimate of the total cost of the proposed contract, and, if applicable, the estimate for each phase indicated in the statement of work, is to be provided. The project officer must provide a cost breakdown of all contributing cost factors, to include an estimate of the technical staff hours, direct materials, subcontracting, travel, etc. The project officer may consult with contracting and cost advisory personnel in developing this information. This section must include the certification of funds availability for the particular proposed acquisition, along with the appropriation and accounting information citations. When funds are not currently available but are anticipated, a statement indicating that the financial plan includes provision for the funds for the proposed acquisition but the funds are not yet available for obligation shall be included in lieu of the certification of funds availability. (Contracts cannot be awarded unless funds are available, but see FAR 32.703-2.)

(5) *Reference material.* A list, by title and description, of study reports, plans, drawings, and other data to be made available to prospective offerors for use in preparation of proposals and/or the contractor for use in performance of the contract is to be provided. The project officer must indicate whether this material is currently available or when it will be available.

(6) *Technical evaluation criteria and instructions.* The project officer is to include the technical evaluation criteria, which have been developed based on the requirements of the specific project, and any instructions and information which will assist in the preparation of prospective offerors' technical proposals. For example, critical areas discussed in the statement of work and the relative order of importance and weights assigned to each of these areas for technical evaluation purposes must be identified. These areas may include understanding of the problem, technical approach, experience, personnel, facilities, etc.

(7) *Sources for solicitation.* The project officer is to develop and in-

clude a list of known potential sources by name and mailing address. The project officer is encouraged to use trade and professional journals and publications to identify new prospective sources to supplement the list of known sources. Efforts to identify set-aside possibilities, i.e., small, disadvantaged, and labor surplus areas, and women-owned businesses, must be explained.

(8) *Special approvals, clearances, and requirements.* All special approvals, clearances, and requirements pertinent to the proposed acquisition are to be listed in this section. Copies of the actual documents are to be attached to the RFC. If the approval, clearance, or requirement has been requested and is being processed, a footnote to this effect, including all pertinent details, must be included in this section. A list of Government-wide and Department imposed approvals, clearances, and requirements is set forth in 307.105-2. Comprehensive checklists of these and any OPDIV, agency, regional office, etc. special approvals, clearances, and requirements shall be provided for reference purposes to program offices by the servicing contracting activity.

(9) *Identification and disposition of data.* The project officer must identify the data expected to be generated by the acquisition and specify the data to be delivered to the Department (see 315.7005(b)(2)) and that to be retained by the contractor. The project officer must also include information relative to the use, maintenance, disclosure, and disposition of data. The project officer must include a statement as to whether or not another acquisition, based upon the data generated by the proposed acquisition, is anticipated. The project officer must also include a statement indicating whether the proposed acquisition is or is not subject to the Privacy Act (see FAR Subpart 24.1 and Subpart 324.1).

(10) *Project officer and alternate.* The project officer's name, title, organization, mailing address, and telephone number are to be provided in this section, along with the same data for the project officer's alternate. In addition, a statement that the project officer has completed the Department's project officer training course is to be provided (see 307.170).

(b) The following must be submitted with every RFC but are to be prepared as separate attachments so they may be readily adopted into the request for proposal format:

(1) *Statement of work or specification.* The statement of work describes the requirements to be performed and may describe the methods to be used (see 307.105-3 and FAR 35.005 for a detailed explanation). A specification is used in lieu of a statement of work when a clear and accurate description of the technical requirements for a product, material, or service can be provided along with the procedure to determine that the requirements have been met. It is essential that a complete and comprehensive statement of work or specification be provided by the project officer.

(2) *Schedule of deliverables or reporting requirements.* The project officer must specifically describe what is to be delivered and when it is to be delivered to ensure proper contract monitoring. Usually, technical and financial progress reports and the final report are prescribed in this section. These reports should be tailored to the instant acquisition and should avoid unnecessary and burdensome reporting requirements.

(c) The following may not be applicable to all RFC's but must be included as attachments whenever any do apply:

(1) *Government property.* The project officer must identify, as referenced in the statement of work, the types, individual items, and quantities of Government property to be furnished to or allowed to be acquired by, the resultant contractor, if known. The project officer must specify when the Government property is to be made available to the resultant contractor.

(2) *Special terms and conditions.* The project officer may suggest inclusion of any special terms and conditions applicable to the proposed acquisition not already covered in the statement of work or the applicable contract general provisions.

(3) *Justification for other than full and open competition.* If the proposed

acquisition is to be awarded using other than full and open competition, a justification, prepared in accordance with FAR Subpart 6.3 and Subpart 306.3, must be submitted as an attachment to the RFC.

(4) *Privacy Act "system notice."* When the project officer has determined that the requirements of the Privacy Act are applicable to the proposed acquisition, a copy of the "system notice" must be attached to the RFC (see 324.103(d)).

[49 FR 13979, Apr. 9, 1984, as amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

315.7006 Review.

Upon receipt of the RFC, the contracting activity shall review the contents to ensure that all pertinent information has been provided by the program office. If pertinent information is missing or if there are discrepancies in previously agreed upon information, such as significant alterations in the statement of work, the contracting activity shall obtain or clarify the information so that the acquisition schedule is met. If the program office delays furnishing the information or clarification, the acquisition schedule may have to be changed. When this circumstance arises, the contracting activity should notify the head of the sponsoring program office of the problem, in writing, of the possible slippage in the acquisition schedule, and the need for an expeditious remedy. If the head of the sponsoring program office is not responsive to the request for expediency, the matter should be referred to higher management authorities for resolution.

[49 FR 13979, Apr. 9, 1984, as amended at 49 FR 36110, Sept. 14, 1984]

PART 316—TYPES OF CONTRACTS

Subpart 316.3—Cost-Reimbursement Contracts

Sec.
316.301 General.
316.301-3 Limitations.
316.303 Cost-sharing contracts.
316.306 Cost-plus-fixed-fee contracts.

Sec.

Subpart 316.4—Incentive Contracts

316.403 Fixed-price incentive contracts.

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.601 Time-and-materials contracts.
316.603 Letter contracts.
316.603-2 Application.
316.603-3 Limitations.
316.603-70 Information to be furnished when requesting authority to issue a letter contract.
316.603-71 Approval for modifications to letter contracts.

Subpart 316.7—Agreements

316.702 Basic agreements.
316.770 Unauthorized types of agreements.
316.770-1 Letters of intent.
316.770-2 Memorandums of understanding.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14004, Apr. 9, 1984, unless otherwise noted.

Subpart 316.3—Cost-Reimbursement Contracts

316.301 General.

316.301-3 Limitations.

(c) The following format shall be used and executed by the contracting officer as the determination and findings authorizing the use of a cost-reimbursement contract and establishing the fee:

DEPARTMENT OF HEALTH AND HUMAN SERVICES—DETERMINATION AND FINDINGS

Authority to Use Cost-Reimbursement Contract

I hereby find that:

(1) The (agency title) proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is ($———) (if contract is CPFF type, insert, "plus a fixed fee of ($———) which is —— percent of the estimated cost exclusive of fee").

(2) (Set forth facts and circumstances that show why it is impracticable to secure property or services of the kind or quantity required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.) I hereby determine that:

On the basis of the above findings, and in accordance with FAR 16.301-3, it is impracticable to secure the property or services of the kind or quality required without the use of a (cost, cost-sharing, or cost-plus-a-fixed fee*) type of contract, or the (cost, cost-sharing, or cost-plus-a-fixed fee*) method of contracting is likely to be less costly than other methods.

Date ______________________________

Signature __________________________

[49 FR 14004, Apr. 9, 1984, as amended at 50 FR 23132, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 51 FR 44294, Dec. 9, 1986]

316.303 Cost-sharing contracts.

For detailed information concerning the use of cost-sharing contracts, see 335.070.

316.306 Cost-plus-fixed-fee contracts.

(c)(2) The determination and findings (D&F) required by FAR 16.306(c)(2) has been combined with the D&F required by FAR 16.301-3(c) authorizing the use of cost-reimbursement contract, and is shown in 316.301-3(c). The contracting officer is responsible for executing the D&F and is authorized to make both determinations required by the FAR.

[51 FR 44294, Dec. 9, 1986]

Subpart 316.4—Incentive Contracts

316.403 Fixed-price incentive contracts.

(c) The determination and findings required by FAR 16.403(c) shall be executed by the chief of the contracting office after it is prepared by the contracting officer.

[51 FR 44294, Dec. 9, 1986]

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.601 Time-and-materials contracts.

(c) *Limitations.* The format prescribed in 316.301-3(c) shall be used and executed by the contracting officer as the determination and findings authorizing the use of either a time-and-materials contract or a labor-hour contract, except that the final paragraph shall be changed to read as follows:

I hereby determine that:

On the basis of the above findings, no other type of contract will suitably serve for the acquisition of the required work or services.

316.603 Letter contracts.

316.603-2 Application.

It is the policy of the Department to refrain from issuing letter contracts. Exceptions to this policy will be permitted only in those cases where all matters of a substantive nature, such as statements of work, delivery schedules, and general and special clauses have been resolved and agreed upon.

316.603-3 Limitations.

The principal official responsible for acquisition shall be the approving official who executes the prescribed written statement. However, if the principal official responsible for acquisition is to sign the letter contract as the contracting officer, the approving official becomes the head of the contracting activity.

[49 FR 14004, Apr. 9, 1984, as amended at 51 FR 44294, Dec. 9, 1986]

316.603-70 Information to be furnished when requesting authority to issue a letter contract.

The following information should be included by the contracting officer in any memorandum requesting approval to issue a letter contract:

(a) Name and address of proposed contractor.

(b) Location where contract is to be performed.

(c) Contract number, including modification number, if possible.

(d) Brief description of work and services to be performed.

(e) Performance or delivery schedule.

(f) Amount of letter contract.

(g) Estimated total amount of definitized contract.

(h) Type of definitive contract to be executed (fixed price, cost-reimbursement, etc.)

(i) Statement of the necessity and advantage to the Government of the use of the proposed letter contract.

(j) Statement of percentage of the estimated cost that the obligation of funds represents. In rare instances where the obligation represents 50 percent or more of the proposed estimated cost of the acquisition, a justification for that obligation must be included which would indicate the basis and necessity for the obligation (e.g., the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement). In every case, documentation must assure that the amount to be obligated is not in excess of an amount reasonably required to perform the work.

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*Use applicable word, words, or statement.

(k) Period of effectiveness of the proposed letter contract. If more than 180 days, complete justification must be given.

(l) Statement of any substantive matters that need to be resolved.

316.603-71 Approval for modifications to letter contracts.

All letter contract modifications (amendments) must be approved by the principal official responsible for acquisition. Requests for authority to issue letter contract modifications shall be processed in the same manner as requests for authority to issue letter contracts and shall include the following:

(a) Name and address of the contractor.

(b) Description of work and services.

(c) Date original request was approved and indicate approving official.

(d) Letter contract number and date issued.

(e) Complete justification as to why the letter contract cannot be definitized at this time.

(f) Complete justification as to why the level of funding must be increased.

(g) Complete justification as to why the period of effectiveness is increased beyond 180 days, if applicable.

(h) If the funding of the letter contract is to be increased to more than 50 percent of the estimated cost of the acquisition, the information required by 316.603-70(j) must be included.

Subpart 316.7—Agreements

316.702 Basic agreements.

(b) *Application.*

(2) Basic agreements shall continue in effect until termination, supersession, or expiration of the term.

(d) *Contracts incorporating basic agreements.*

(2) Any provision of a contract which conflicts with the terms of a basic agreement must be approved by the Director, Office of Procurement and Logistics Policy.

(4) Basic agreements may include negotiated overhead rates for cost-reimbursement type contracts. Where negotiated overhead rates are included, the bases to which the rates apply and the period of applicability must also be stated. All pertinent provisions such as final rates for past periods, provisional rates for current or future periods, ceilings, and any specific items to be treated as indirect costs shall also be included as appropriate.

(e) *Content and format.* A basic agreement shall consist of an execution page(s), contents page, special provisions, and general provisions. The following is illustrative of an execution page:

Basic Agreement Number   Page 1 of— pages

Basic Agreement

Between the United States of America, as represented by the Department of Health and Human Services, and (Name of Contractor), this agreement, effective (Insert Date) by and between the United States of America, hereinafter called the "Government," as represented by the Department of Health and Human Services, and (Name of Contractor), a corporation organized and existing under the laws of the (State/Commonwealth) of ——— with its principal office in (City, State), hereinafter called the "Contractor".

Witnesseth That

Whereas, the Government and the Contractor desire to enter into a single basic agreement for use only in connection with negotiated (insert type of contract and categories of effort that the basic agreement will cover) entered into on or after the effective date of this Agreement, and prior to its termination; and

Whereas, the parties understand that this Agreement shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the Contractor.

Now therefore, the Government and the Contractor agree that the provisions and clauses of the Special Provisions, as set forth herein, and the General Provisions, as set forth and modified herein, shall be incorporated in and constitute the terms and conditions applicable to all negotiated (insert type of contract and categories of effort that the basic agreement will cover) entered into on or after the effective date of this Agreement, and prior to its termination.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first above written.

United States of America

Name of Contractor ____________________

____

Signature of Contracting Officer

By ____________________

Signature of Authorized Official

Typed name ____________________

Typed name ____________________

Date ____________________

(f) *Procedures.* (1) Negotiation of basic agreements may be undertaken by OPDIV contracting activities on behalf of the Department. When an OPDIV contracting activity decides to negotiate a basic agreement with an organization, prior authorization must be requested, in writing, from the Director, Office of Procurement and Logistics Policy (OPLP). When the Director, OPLP, gives written authorization to the OPDIV contracting activity designated to conduct negotiations on behalf of the Department, all other OPDIVs will be notified of this designation. If another OPDIV elects, it may attend the negotiation or furnish special terms and conditions or provisions for inclusion in the proposed basic agreement by advising the designated negotiating activity in writing within ten (10) days from the date of the authorization. After review and resolution of all requests for inclusion of special terms and conditions or provisions, the designated negotiating activity will invite those OPDIVs which expressed an interest in attending the negotiations and make the necessary arrangements for the negotiation of the basic agreement.

(2) Prior to the conclusion of negotiations, the designated negotiating activity shall furnish the OPDIVs a draft copy of the proposed basic agreement together with:

(i) A resume of all salient features of the basic agreement which will facilitate review;

(ii) Any of the negotiating OPDIV's guides or procedures which are being considered for incorporation into the basic agreement by reference;

(iii) A listing of nonstandard clauses used, the genesis of such clauses, and the reasons for such clauses in the basic agreement; and

(iv) The contractor's comments, including the basis for requesting any deviation from the HHSAR and the designated negotiating activity's position with respect thereto.

(3) The OPDIVs shall have fifteen (15) days from the date of the memorandum transmitting the information to submit comments on the draft copy of the basic agreement. After receipt, analysis, and resolution of the comments of the OPDIVs, the designated negotiating activity will proceed to conclude the negotiation of the basic agreement.

(4) After conclusion of the negotiation, but prior to execution of the basic agreement, a copy of the basic agreement, together with the information specified in paragraph (f)(2) above, the comments of the OPDIVs, the designated negotiating activity's analysis of the OPDIV comments, and the basis for the action taken will be furnished to the Director, OPLP for review by DPP and the Office of General Counsel. Approval by the Director, OPLP must be given prior to the execution of the basic agreement. After approval and execution of the basic agreement, the designated negotiating activity will distribute the executed document to the OPDIVs, Office of General Counsel, and the Director, OPLP. The basic agreement is mandatory for use by all activities of the Department for all acquisitions falling within the scope of the basic agreement.

[49 FR 14004, Apr. 9, 1984, as amended at 50 FR 23126, 23133, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

316.770 Unauthorized types of agreements.

316.770-1 Letters of intent.

A letter of intent is an informal unauthorized agreement between the Government and a prospective contractor which indicates that products or services will be produced after completion of funding and/or other contractual formalities. Letters of intent are often solicited by prospective contractors or may be originated by Government personnel. Letters of intent are not authorized by the FAR and are prohibited for use by Department personnel.

316.770-2 Memorandums of understanding.

A "memorandum of understanding" is an unauthorized agreement, usually drafted during the course of negotiations, to modify mandatory FAR and HHSAR provisions in such a manner as to make them more acceptable to a prospective contractor. It may be used to bind the contracting officer in attempting to exercise rights given the Government under the contract, or may contain other matters directly contrary to the language of the solicitation or prospective contractual document. Use of such memorandums of understanding is not authorized. Any change in a solicitation or contract shall be made by amendment or modification to that document. When a change to a prescribed contract clause is considered necessary, a deviation shall be requested.

PART 317—SPECIAL CONTRACTING METHODS

Subpart 317.2—Options

Sec.

317.201 Definition.
317.202 Use of options.
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Subpart 317.70—Consolidated Acquisitions

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Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act

317.7100 Scope of subpart.
317.7101 Applicable regulations.
317.7102 Methods of processing requests for training.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14006, Apr. 9, 1984, unless otherwise noted.

Subpart 317.2—Options

317.201 Definition.

(a) An option must:

(1) Identify the supplies or services as a discrete option quantity in addition to the basic quantity of supplies or services to be delivered under the initial contract award;

(2) Establish a price or specify a method of calculation which will make the price certain;

(3) Be agreed to and included in the initial contract award; and

(4) Permit the Government the right to exercise the option unilaterally.

(b) Contract provisions which provide the Government the right to buy additional requirements, subject to the written agreement of the contractor do not meet the requirements of paragraph (a)(4) of this section and are not authorized. Further, any contract provision which merely extends the initial contract period without requiring delivery of additional supplies or services is not an option.

317.202 Use of options.

(c)(6) The primary purpose for inclusion would be the achievement of administrative convenience.

317.203 Solicitations.

(g)(2) When unusual circumstances exist, the principal official responsible for acquisition (not delegable) may approve a greater percentage (but see FAR 17.205).

317.206 Evaluation.

The determination referenced in FAR 17.206(a) shall be made by the chief of the contracting office.

Subpart 317.70—Consolidated Acquisitions

317.7001 General.

Studies have indicated that substantial savings can be realized through centralized and consolidated acquisitions of common use supplies, services, and equipment. The Department has identified common use items and has applied the principle of consolidated acquisition to these items.

317.7002 Policy.

(a) The following supplies, services, and equipment have been indentified as common use items and are to be acquired by the centralized contracting activity identified in paragraph (b):

(1) Administrative supplies, equipment, and services (i.e., general use office items or related services), as distinguished from functional or program requirements.

(2) Automated data processing services (but see ADP Systems Manual, Chapter 4).

(3) Stenographic reporting services.

(4) Visual arts, graphics, and supplementing services.

(5) Press clipping services.

(b) Activities within the metropolitan Washington, DC area are required to submit purchase requests for the above items to the applicable centralized contracting activity as follows:

(1) Activities located in the Southwest Washington complex; Procurement Branch, Division of Contract and Grant Operations, Office of Management Services, Office of the Secretary.

(2) Parklawn Complex, Rockville, Maryland (Montgomery and Prince Georges Counties area); Division of Materiel Management, Administrative Services Center, Office of Management, Public Health Service.

(3) National Institutes of Health; Division of Administrative Services, National Institutes of Health.

(c) Activities outside the metropolitan Washington, DC area are encourage to establish centralized points to conduct acquisitions for common use items.

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act

317.7100 Scope of subpart.

This subpart provides alternate methods for obtaining training in non-Government facilities under the Government Employees Training Act, 5 U.S.C. Chapter 41.

317.7101 Applicable regulations.

Basic policy, standards and delegations of authority to approve training are contained in HHS Personnel Manual Instructions 250-15 and 410-1. Travel expense instructions are contained in HHS Travel Manual Chapter 1-90.

317.7102 Methods of processing requests for training.

(a) HHS Form 350 may be processed as a request and authorization to the contracting office.

(b) As deemed desirable by OPDIVs and their subordinate elements, HHS Form 350 need not be processed through the contracting office provided the following conditions are met:

(1) The authorizing official has contracting authority delegated to his/her position.

(2) HHS Form 350 is acceptable to the OPDIV's fiscal office as an obligating document.

(c) Use of HHS Form 350 under the provisions of paragraph (b) above shall constitute an authorized deviation from the requirements of use of Optional Forms 347 and 348.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 319—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 319.2—Policies

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319.201 General policy.
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Subpart 319.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

319.705 Responsibilities of the contracting officer under the subcontracting assistance program.
319.705-2 Determining the need for a subcontracting plan.
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319.705-5 Awards involving subcontracting plans.
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Subpart 319.8—Contracting With the Small Business Administration (the 8(a) Program)

319.801 General.
319.803 Selecting acquisitions for the 8(a) program.
319.870 Acquisition of technical requirements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14007, Apr. 9, 1984, unless otherwise noted.

Subpart 319.2—Policies

319.201 General policy.

(c) The functional management responsibilities for the Department's small business, disadvantaged business, and labor surplus area programs are delegated to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU).

(1) The Director, OSDBU is responsible for:

(i) Recommending to the Under Secretary overall Department-wide operating concepts and policies relating to the Department's small business, disadvantaged business, and labor surplus area programs;

(ii) Implementing policy decisions through the issuance of operating procedures (Operating Divisions (OPDIVs) may develop alternative procedures for achieving departmental policy goals, and objectives. However, any change in procedures must be approved by the Under Secretary);

(iii) Reviewing and evaluating the Department's policies, practices, and procedures pertaining to the disadvantaged business, small business, and labor surplus area programs, as well as recommending changes or corrective actions to the OPDIV heads or to the Under Secretary, as appropriate;

(iv) Providing the Under Secretary with regular appraisals of performance and quality of effort, including timely notification of significant problems, events, and accomplishments, and the need for changes in Department-wide objectives and policies; and

(v) Providing technical assistance and support to the small and disadvantaged business utilization specialists.

(2) The Director, OSDBU is authorized to:

(i) Establish standards, procedures and operating guidelines controlling the manner in which the small business, disadvantaged business, and labor surplus areas programs are conducted throughout the Department;

(ii) Provide advice on proposed allocations of personnel, funds, and other resources in light of the total needs of the Department;

(iii) Prescribe, after coordination with appropriate concerned personnel, reporting requirements necessary to preserve openness in reporting, identifying emerging problems, monitor Department-wide activity, and provide a basis for appraisal and evaluation of performance. To the maximum extent, these reporting requirements will be satisfied through existing Department-wide reporting systems or by making modifications to them;

(iv) Conduct surveys and review of operating practices in the OPDIVs and regional offices; and

(v) Communicate directly with the small and disadvantaged business utilization specialists to assist them in carrying out their individual and collective responsibilities.

§ 319.201-70 Small and disadvantaged business utilization specialist.

(a) The Head of each OPDIV shall appoint a qualified full time small and disadvantaged business utilization specialist (SADBUS) in the following activities: Office of Human Development Services (OHDS), Health Care Financing Administration (HCFA), Social Security Administration (SSA), Public Health Service (PHS), to include the Food and Drug Administration (FDA), Health Resources and Services Administration (HRSA) (and each regional Office of Engineering Services), National Institutes of Health (NIH), Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), Centers for Disease Control (CDC), and Administrative Services Center (ASC). A SADBUS shall also be appointed for the Office of the Secretary (OS) and for each Regional Office. As deemed necessary, additional small and disadvantaged business utilization specialists may be appointed in larger contracting activities.

(b) When the volume of contracting does not warrant assignment of a full-time SADBUS, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over other responsibilities. The specialist shall be responsible directly to the appointing authority and shall be at an organizational level outside the direct acquisition chain of command, i.e., should report directly to the principal official responsible for acquistion, where appropriate.

(c) The Director, OSDBU will exercise functional management authority over small and disadvantaged business utilization specialist regarding small business, disadvantaged business, and labor surplus area matters. Appointments of SADBUS's shall only be made after consultation with the Director, OSDBU. A copy of each appointment and termination of appointment of specialists shall be forwarded to the Director, OSDBU.

(d) The SADBUS shall perform the following duties, as determined to be appropriate to the activity by the appointing official or by the Director, OSDBU. The SADBUS shall:

(1) Maintain a program designed to locate capable small business, disadvantaged business, women-owned business and labor surplus area business sources for current and future acquisitions, through SBA or by using other methods, establish appropriate source lists for each category, and work closely with contracting and small purchasing offices to ensue offers are solicited from firms on the source lists;

(2) Coordinate inquiries and requests for advice from small business, disadvantaged business, women-owned business, and labor surplus area business concerns on acquisition matters, and counsel them with respect to business opportunities to enhance their potential participation in the Department's acquisition program;

(3) Prior to the issuance of solicitations (or contract modifications for additional supplies or services) in excess of $10,000, which have not been reviewed, reserved, or set-aside by the contracting officer, review the contracting officer's justification for such action;

(4) Assure that small business, disadvantaged business, women-owned business, and labor surplus area concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Review proposed requirements for possible breakout of items suitable for acquisitions from small business, disadvantaged business, women-owned business, and labor surplus area concerns;

(6) Assure that financial assistance, available under existing regulations, is offered, and that requests by small business concerns for proper assistance are not treated as a handicap in the award of contracts;

(7) Participate in determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participate in the evaluation of a prime contractor's small business, labor surplus area, and disadvantaged business subcontracting plans;

(9) Advise and assist contracting officers in discharging their responsibilities by:

(i) Monitoring and reviewing contractor performance to determine compliance with small and small disadvantaged business subcontracting plans, and

(ii) Developing and maintaining records and reports that reflect such compliance or noncompliance;

(10) Review and make appropriate recommendations to the contracting officer on proposals to furnish Government-owned facilities to contractors if this action may enhance the small business program;

(11) Assure that the participation of small businesses, disadvantaged businesses, women-owned business, and labor surplus area concerns is accurately reported;

(12) Make available to SBA copies of solicitations when so requested;

(13) When a bid or offer from a small business, disadvantaged business, women-owned business, or labor surplus area concern has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(14) Participate in government-industry conferences to assist small business, disadvantaged business, women-owned business, and labor surplus area concerns, including Business Opportunity/ Federal Acquisition Conferences, Minority Business Enterprises Acquisition Seminars, and Business Opportunity Committee meetings;

(15) Advise potential sources how they can obtain information about sealed bid and negotiated acquisitions;

(16) Brief the head of the contracting activity at least once quarterly concerning the status of the activity's small business, disadvantaged business, women-owned business, and labor surplus area programs in relation to goals and objectives established;

(17) Participate in the development, implementation, and review of automated source systems to assure that the interests of small business, disadvantaged business, women-owned business, and labor surplus area concerns are fully considered;

(18) Assure that the organization maintains a list of products and services which are categorized as repetitive small business set-aside;

(19) Provide small business, disadvantaged business, women-owned business, and labor surplus area concerns information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor, and others, including State agencies and trade associations;

(20) Be responsible for establishing an education and training program for personnel whose duties and functions affect the activity's small business, disadvantaged business, women-owned business, and labor surplus areas programs; and

(21) Participate in interagency programs relating to small business, disadvantaged business, women-owned business, and labor surplus area matters as authorized by the Director, OSDBU.

[49 FR 14007, Apr. 9, 1984, as amended at 50 FR 23126, 23133, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

319.270 Federal acquisition conference.

The Department of Commerce is responsible for coordinating the participation of Federal civilian agencies in a continuing series of conferences which are sponsored by members of Congress. The objectives of these conferences are:

(a) Location of additional acquisition sources to broaden the acquisition base of Federal agencies;

(b) Stimulation of local, regional, and national economic growth, national security, and cost reduction;

(c) Location of underutilized production capacity;

(d) Prevention or elimination of pockets of underemployment; and

(e) Assistance of small and small disadvantaged business concerns.

As notified by the OSDBU, contracting activities shall provide appropriate SADBUS or acquisition personnel to participate in person-to-person counseling at these conferences. Ordinarily, participation by contracting activities will be restricted to conferences held within the geographical areas adjacent to their officers. The brochure, "How To Do Business With DHHS" should be of great assistance in this counseling as it has been specifically prepared to assist individuals, firms, and institutions who may wish to do business with this Department. It contains a brief description of the mission and programs of HHS and its Operating Divisions and provides a listing of contracting offices and the types of services and commodities acquired by each.

Subpart 319.5—Set-Asides for Small Business

319.501 General.

(c) Prior to the contracting officer's review, the SADBUS shall review each proposed acquisition to determine the feasibility of recommending award to the Small Business Administration (SBA) pursuant to section 8(a) of the Small Business Act. When it cannot be awarded to SBA pursuant to section 8(a), the SADBUS shall review the proposed acquisition to determine if it can be recommended as a set-aside under one of the set-aside priorities stated in FAR 19.504. The SADBUS's finding shall be entered on Form HHS-653, Small Business-Labor Surplus Set-Aside Review Form, with the reasons for the type of set-aside recommended, or the reasons for recommending against a set-aside, and provided to the contracting officer. Upon receipt of the Form HHS-653, the contracting officer shall promptly approve or disapprove the SADBUS's finding. If the SADBUS recommends against a set-aside and the contracting officer approves, the proposed acquisition will be handled as an open market acquisition. If the SADBUS recommends against a set-aside but the contracting officer disapproves, the contracting officer is to document his/her decision on the Form HHS-653, discuss the matter with the SADBUS, and attempt to agree on a decision; however, the contracting officer will make the final determination as to whether the proposed acquisition will be set-aside or not. If the contracting officer approves the SADBUS's set-aside recommendation, the proposed acquisition will be set-aside as specified. However, if the contracting officer disapproves the SADBUS's set-aside recommendation, the reasons must be documented on the Form HHS-653. (See 319.505 for options available to the SADBUS regarding the contracting officer's disapproval of a set-aside recommendation.) In all cases, the completed Form HHS-653 is to be retained by the contracting officer and placed in the contract file.

319.503 Setting aside a class of acquisitions.

319.503–70 Small business class set-aside for construction, repair, and alteration work.

A small business class set-aside is considered to have been made for each proposed acquisition for construction, repair, and alteration work in an estimated amount ranging from $2,500 to $2 million. Accordingly, the contracting officer shall set aside for small business each proposed acquisition. If, in his/her judgment, the particular acquisition falling within the dollar limits specified above is unsuitable for a set-aside for exclusive small business participation, the procedure set forth in FAR 19.506 shall apply. Proposed acquisitions for construction, repair, and alteration work in an estimated

best copy available

amount of more than $2 million shall be processed on a case by case basis.

319.505 Rejecting set-aside recommendations.

(a) If the contracting officer rejects the SADBUS's recommendation for a set-aside and an SBA procurement center representative (PCR) is not assigned or available, the SADBUS may appeal, in writing, to the head of the contracting activity (HCA) or his/her designee. The SADBUS shall provide the HCA or designee all the pertinent information concerning the set-aside disagreement, and the HCA shall respond in writing within seven business days. The HCA's decision is final and not appealable. The decision by the HCA shall be attached to the Form HHS-653 and placed in the contract file. After receipt of a final decision by the HCA, and if the decision approves the action of the contracting officer, the SADBUS shall forward, for information and management purposes, complete documentation of the case to the OSDBU Director. Documentation transmitted shall include, as a minimum, a copy of the appeal memorandum submitted to the HCA, a copy of the IFB or RFP, a list of proposed sources, a copy of the Form HHS-653 and attachments completed by the SADBUS and the contracting officer, a copy of the HCA's decision, and all other written material considered by the HCA in arriving at the decision. The SADBUS' transmittal memorandum shall contain an affirmative statement that the attachments constitute the complete file reviewed and considered by the HCA in making the final decision.

If the SADBUS refers the case to the SBA PCR, the SBA PCR may either concur with the decision of the contracting officer not to set-aside the proposed acquisition or recommend to the contracting officer that it be set-aside. In either instance, no further appeal action shall be taken by the SADBUS. (Refer to FAR 19.505 for the procedures available to the SBA PCR concerning a set-aside rejection.)

319.506 Withdrawing or modifying set-asides.

(b) If an SBA PCR is not assigned, the disagreement between the contracting officer and the SADBUS shall be referred to the HCA for resolution.

(d) Immediately upon notice from the contracting officer, the SADBUS shall provide telephone notification regarding all set-aside withdrawals to the OSDBU Director.

319.570 Contract payments.

Contract payments to small business concerns must be made on a timely basis. Payment of an invoice or voucher must be made within 30 days after receipt of the invoice or voucher or from acceptance of the goods or services. Each invoice or voucher from a small business concern not sent directly to the servicing finance office, but received by the contracting activity, shall be stamped or otherwise identified for expedited payment before it is forwarded to the servicing finance office.

Subpart 319.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

319.705 Responsibilities of the contracting officer under the subcontracting assistance program.

319.705-2 Determining the need for a subcontracting plan.

The dollar value of all proposed incremental funding actions shall be included in determining whether the acquisition meets the dollar threshold requiring a subcontracting plan. The subcontracting plan shall be based on the total value of the acquisition which will include the value of all option quantities or funding actions.

319.705-3 Preparing the solicitation.

The SBA PCR should be allowed a period of one to five business days for the review of the solicitation, depending upon the circumstances and complexity of the individual acquisition.

Whenever the clause "Small Business and Small Disadvantaged Business Subcontracting Program" (see FAR 52.219-9) is to be used in a solicitation for a negotiated acquisition, a notification must be included in the solicitation that advises prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range for negotiation with the apparent successful offeror.

319.705–4 Reviewing the subcontracting plan.

The offeror's/bidder's subcontracting plan for small business concerns shall be judged independently of the subcontracting plan for small disadvantaged business concerns. If a subcontracting plan is not obtained, the contracting officer must document the contract file to substantiate the reasons why the plan was not obtained. The contracting officer must obtain a satisfactory subcontracting plan prior to awarding the contract.

(c) During the source selection process, subcontracting plans may be requested from all concerns determined to be in the competitive range for negotiation with the apparent successful offeror.

(d) If the contracting officer determines that the subcontracting plan submitted reflects the best effort by the offeror/bidder to award subcontracts to small and small disadvantaged business concerns, but the SADBUS disagrees with the contracting officer's determination, a final determination shall be made by the principal official responsible for acquisition. The SADBUS shall submit this final determination to the Director, OSDBU with the appropriate supporting documentation.

(1) The contracting officer may accept the terms of an overall or "master" company subcontracting plan if it is incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bidder for a specific contract, if:

(i) The master plan contains all the elements required by the statute;

(ii) Subcontracting goals for small and small disadvantaged business concerns are specifically set forth in each contract or modification over the statutory thresholds;

(iii) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification;

(iv) The contracting officer has copies of the entire plan; and

(v) The SBA PCR has had an opportunity to comment on the master plan.

(2) If the prime contract is for a commercial product, the required subcontracting plan may relate to the company's production of the item generally (both for the Government contract and for regular commercial sale) rather than solely to the item being acquired under the Government contract. In such cases, the contractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year. The approved plan will remain in effect for the entire fiscal year and is applicable to all deliveries made under contracts entered into during the contractor's fiscal year, even though these deliveries are made in a succeeding fiscal year. The contractor shall submit a new plan to the first agency with which it enters into a contract (over the statutory threshold) during a succeeding fiscal year. The new plan shall apply to all deliveries made under contracts entered into during the succeeding fiscal year, no matter when the deliveries are made.

319.705–5 Awards involving subcontracting plans.

(a)(3) The SBA PCR shall be allowed a period of one to five business days to review the contract award package, depending upon the circumstances and complexity of the individual acquisition.

319.705–6 Postaward responsibilities of the contracting officer.

The SADBUS shall perform the distribution requirements stated in paragraphs (a) through (c) of FAR 19.705-6. A copy of any company-wide plans and associated approvals shall also be sent to the Director, OSDBU by the SADBUS. In addition, the SADBUS is responsible for summarizing and reporting to the Director, OSDBU, on a quarterly basis, all prime contracts $500,000 and over ($1 million for construction) using the following reporting format:

(a) Name of the OPDIV and program office;

(b) Number and dollar amount of contracts requiring subcontracting plans;

(c) Number of contracts with subcontracting plans;

(d) Number of contracts without subcontracting plans;

(e) Small and small disadvantaged business subcontracting goals; and

(f) Statements citing reasons why small and small disadvantaged business subcontracting plans were not included in the contracts.

319.706 Responsibilities of the cognizant administrative contracting officer.

(a) The contracting officer shall comply with the requirements of FAR 19.706(a), and shall use the Standard Form 294, Subcontracting Report for Individual Contracts, to monitor the contractor's progress in achieving both the small business and small disadvantaged business subcontracting goals. The contracting officer shall require the contractor to provide in the Remarks block of each Standard Form 294 submitted a narrative of the progress in fulfilling the small business and small disadvantaged business subcontracting goals. The contracting officer shall require the contractor to report any difficulties in achieving the goals and the actions being taken by the contractor to overcome the difficulties. The contracting officer shall document the contract file whenever the contractor is experiencing difficulties in achieving the planned subcontracting goals, and shall indicate the actions taken by the contractor to resolve the difficulties and the actions taken by the contracting officer to remedy the situation. A copy of this documentation shall be provided to the SADBUS.

(b) At the time of physical completion of the contract, the contracting officer shall prepare a memorandum for record for inclusion in the contract file indicating whether or not the contractor complied with the subcontracting plan and subcontracting provisions of the contract.

(1) If the contractor achieved its subcontracting dollar goals for both small business and small disadvantaged business, the memorandum shall state that the contractor complied with the subcontracting plan and provisions of the contract. No other documentation is needed.

(2) If the contractor failed to achieve its subcontracting dollar goals for either small business or small disadvantaged business, or both, the contracting officer shall indicate this failure in the memorandum and determine whether the contractor did or did not exercise its best efforts in attempting to achieve the goals.

(i) If determined that the contractor exercised its best efforts, the contractor shall be found to have complied with the subcontracting plan and provisions of the contract. The rationale for this determination shall be documented in the memorandum.

(ii) If determined that the contractor did not exercise its best efforts, the contractor shall be found to have not complied with the subcontracting plan and provisions of the contract. The reasons for this determination shall be documented in the memorandum, along with a description of specific actions taken by the contracting officer during the performance of the contracting to attempt to remedy the failure.

(c) A copy of the memorandum pertaining to either situation described in paragraph (b)(2) (i) or (ii) of this section shall be sent to the Director, Office of Small and Disadvantaged Business Utilization.

[50 FR 46299, Nov. 7, 1985]

Subpart 319.8—Contracting with the Small Business Administration (The 8(a) Program)

SOURCE: 52 FR 27558, July 22, 1987, unless otherwise noted.

319.801 General.

The signing of the contract document may be accepted as SBA's certification that SBA is competent to perform a specific HHS requirement.

319.803 Selecting acquisitions for the 8(a) program.

Brochures of 8(a) concerns which have been interviewed by the Office of Small and Disadvantaged Business Utilization (OSDBU) are forwarded to each small and disadvantaged business utilization specialist (SADBUS). These brochures are to be reviewed by the SADBUS to match HHS requirements with the capabilities of these concerns. The SADBUS will make the capabilities of these concerns known to program personnel and will obtain other information as needed, by contacting OSDBU or the Small Business Administration (SBA).

319.870 Acquisition of technical requirements.

(a) *Source selection.* (1) SBA has ultimate responsibility for nomination of an 8(a) subcontractor for a proposed 8(a) requirement and may elect to deviate from usual source nomination procedures.

(2) Except for cases where SBA selects a concern for an 8(a) award, or as provided in paragraph (a)(3) below, limited technical competition shall be conducted for requirements for consulting services, computer science and related services, research, development, test, evaluation, demonstration, and technical and professional services, where technical aspects, methodology, or approach are of primary importance rather than price. Limited technical competition may be conducted on the basis of written technical proposals or oral technical discussions coupled with a review of the concerns' capability statements. (However, SBA encourages the submission of "open requirements" (requirements without source recommendations) so that assistance may be afforded to concerns having the greatest need. In particular, SBA has requested that requirements for CPA audit services be submitted as "open requirements" except where sole source offerings are appropriate (see paragraph (a)(3) below). SBA has also determined that the selection procedures outlined in the "Brooks Bill" must be utilized in the award of A & E requirements under the 8(a) program. Therefore, whenever feasible, at least three 8(a) A & E concerns shall be evaluated for each A & E acquisition. Further, to the extent feasible and practical, A & E contracts awarded under the 8(a) program shall be made to concerns which have their home office located in the metropolitan area or state where the work is to be performed.)

(3) There may be circumstances where one 8(a) concern has exclusive or predominant capability among 8(a) concerns by reason of experience, specialized facilities, or technical competence to perform the work within the time required. In these circumstances, after coordinating with the SADBUS, the initiating program office may recommend, for approval by the contracting officer, that only that 8(a) concern be considered for nomination to SBA. This recommendation shall be in writing, setting forth full and complete justification for the nomination. The justification shall be submitted to the appropriate contracting officer, through the SADBUS, for concurrence, and shall be maintained as a permanent record in the contract file. In addition, a copy of the justification shall be included in the offering letter to SBA.

(4) Where limited technical competition is required or is determined to be appropriate, the sources (i.e., concerns) which are to be included will be decided by the contracting activity in consultation with SBA. Consultation will be initiated by nomination of sources recommended by program officials and the SADBUS, and, if SBA elects, by SBA.

(5) Each 8(a) concern or group of concerns nominated for a specific 8(a) requirement shall have been approved by SBA for that particular requirement prior to any discussion with the concern(s) about the requirement.

(6) It is conceivable that limited technical competition will assist in the development of 8(a) concerns. However, contracting activities should recognize that to involve a large number of 8(a) concerns in a limited technical competition may have an adverse impact on the limited financial resources of these concerns. Usually,

three to five concerns should be nominated, depending on the nature of the intended contract and subject to SBA's approval.

(b) *Offering letter.* (1) When a decision has been made by the SADBUS, program director, and contracting officer to process an acquisition through the Small Business Administration, under provisions of section 8(a) of the Small Business Act, the contracting activity shall promptly furnish the applicable SBA office a letter offering the acquisition to the SBA, with information copies to the SADBUS and OSDBU. The offering letter to SBA should transmit the following:

(i) A description of work to be performed or items to be delivered;

(ii) The names of the concerns nominated for technical competition or the name of the concern nominated for award. (For limited technical competition, indicate whether or not written technical proposals are desired. If only one concern is nominated, a written justification must be included to substantiate limiting the nomination to one source, as indicated in 319.870(a)(3));

(iii) Contracting activity dollar estimate of the requirement;

(iv) Acquisition history (e.g., first time offered, items or services not presently being provided by a small business concern, etc.);

(v) Period of performance;

(vi) Any special requirements, restrictions, or geographical limitations (e.g., turn-around time demands a concern within two hours travel time, etc.);

(vii) A statement to the effect that public soliciation for the acquisition has not been issued for small business set-aside;

(viii) A statement to the effect that the acquisition cannot reasonably be expected to be won by an eligible 8(a) concern under normal competitive means;

(ix) Type of proposed contract (i.e., fixed-price, cost plus fixed-fee, requirements, etc.);

(x) A list of contractors who have performed on the specific requirement during the previous 12 months;

(xi) The applicable SIC code; and

(xii) The applicable DCIS product/service code.

(2) Within ten (10) business days after receipt of the offering letter, SBA is to acknowledge the offering letter and accept or reject the requirement. If SBA has not acknowledged the offering letter within this period, the contracting activity, after giving due regard to the urgency of the acquisition, may withdraw the offer by giving written notice to SBA.

(c) *Technical evaluation.* (1) When the concerns to be included in the limited technical competition have been determined by the contracting activity, in consultation with SBA, the contracting officer shall hold a technical competition among those concerns. Cost factors shall not be included in the technical proposals nor brought out in any manner during technical discussions of the proposals.

(2) When the limited technical competition is completed, a technical evaluation report shall be prepared and signed by the technical evaluators. The report shall indicate the ranking of the concerns, include a narrative evaluation specifying the strengths and weaknesses of each concern, and state any reservations or qualifications that might bear upon the selection of a source for negotiation and award. The technical evaluation report is required whether the limited technical competition was conducted on the basis of written technical proposals or oral technical discussions. The technical evaluation report shall be furnished the contracting officer and maintained as a permanent record in the contract file.

(3) The contracting officer shall send a letter to the SBA naming the highest rated concern and indicating the concern appears to have the capability to perform the requirement. The letter shall request authority to negotiate with the concern nominated for award, and include the title of the acquisition and the national buy number assigned by SBA. No other data need be furnished to SBA. Within ten (10) business days after receipt of the letter, the local SBA office will contact the contracting officer to arrange for contract negotiation. If a shorter response time is required, the contract-

ing officer should notify SBA in the letter.

(d) *Negotiation.* (1) When requested by SBA, the contracting activity shall render all possible assistance to SBA with respect to SBA's negotiation of 8(a) subcontracts. However, SBA will usually delegate negotiation authority to the HHS contracting activity.

(2) The contracting officer has a greater latitude in holding a discussion with a concern solicited under an 8(a) acquisition than under a non-8(a) acquisition. Negotiation will normally proceed similarly to the process described in FAR 36.606. If agreement cannot be reached with the highest rated concern, or it is determined that the highest rated concern cannot furnish the required goods or services, or a concern would be unable to earn a profit if awarded the contract, both SBA and OSDBU will be notified, and, upon approval by SBA, negotiations will commence with the next highest rated concern. When extensive discussions with all sources fail to result in any acceptable proposals, the contracting officer will notify SBA. If within ten (10) business days, SBA has not notified the contracting officer of any additional sources or any methods of improving the existing source(s), the contracting activity will proceed with the acquisition without further regard for the 8(a) procedures, unless additional time is requested by SBA and the additional time is granted by the contracting activity after giving due regard to the urgency of the acquisition.

(3) After the conclusion of negotiations with the selected source, the contracting activity will prepare the contract between the contracting activity and SBA and the subcontract between SBA and the selected source. These documents will be prepared in accordance with FAR 19.809, and forwarded to SBA for signature. Contracting activities shall completely negotiate the 8(a) subcontract and prepare the definitive subcontract documents before submitting the prime contract to SBA for signature.

(e) *Delays.* The contracting officer is responsible for promptly notifying all offerors if an award is to be delayed beyond 30 days from the date of receipt of technical proposals. The contracting officer is also responsible for keeping the offerors informed of the situation if the delay persists or other problems arise which impede the award.

(f) *Debriefing.* Unsuccessful offerors shall be promptly notified of the contract award. A debriefing, when requested in writing, shall be provided by the cognizant contracting officer to an 8(a) concern that has been unsuccessful in an 8(a) limited technical competition.

(g) *Liaison with the Small Business Administration.* (1) Contracting activities will maintain a continuous liaison with the SBA to ensure that the overall goals of each activity are achieved. In the event there is a dispute between the contracting activity and an SBA representative regarding any aspect of 8(a) contracting, the contracting activity must promptly notify the OSDBU.

(2) The business development responsibility of SBA requires them to assist in and monitor the growth and development of all 8(a) concerns. Therefore, it is incumbent upon HHS to assist SBA in this effort by utilizing the source selection process in a manner that would make use of the largest possible number of 8(a) concerns.

(h) *Arriving at contract amount.* Contracts will be awarded at prices which are fair and reasonable (see FAR 19.805 and 19.806).

(i) *Advance payments.* 8(a) concerns requesting advance payments should be advised to submit the request to the SBA, in writing, in accordance with SBA operating procedures. SBA is responsible for reviewing and approving requests, and for making funds available, for advance payments under 8(a) contracts.

(j) *Contract modifications, inspections, etc.* The responsibility for subcontract administration and field inspection will, in most cases, be delegated by SBA to the contracting activity. The contracting activity may develop a tripartite agreement for execution by SBA, the 8(a) subcontractor, and the contracting activity instead of developing separate modifications for the SBA contract and the 8(a) subcontract.

(k) *Subcontract administration.* Some concerns may need additional management expertise for optimal performance and completion of a particular contract. Therefore, when subcontract administration is delegated to HHS by SBA, the contracting activity shall promptly apprise the SBA, the SADBUS, and OSDBU whenever the contractor is experiencing problems. SBA should provide necessary technical assistance so the contractor can successfully complete the contract.

(l) *Contract termination.* The OSDBU, SADBUS, and SBA are to be notified prior to initiating final action to terminate an 8(a) contract.

PART 320—LABOR SURPLUS AREA CONCERNS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 320.1—General

320.102 General policy.

Contracting activities should obtain appropriate publications and other information identifying labor surplus areas from:

U.S. Department of Labor, Employment and Training Administration, Office of Policy Evaluation and Research, Division of Labor Market Information, Washington, D.C. 20530.

Contracting officers shall use the "Directory of Labor Surplus Area Contractors," provided by the Office of Small and Disadvantaged Business Utilization, as a source to identify labor surplus area concerns and to augment other labor surplus area source lists. Contracting officers should also seek to identify concerns from labor surplus areas by placing sources sought synopses in the Commerce Business Daily. Small and disadvantaged business utilization specialists shall assist contracting officers in developing and maintaining source lists of small business and other concerns in labor surplus areas. Department of Commerce and SBA regional and field offices should be contacted for assistance in identifying labor surplus area concerns.

[49 FR 14012, Apr. 9, 1984]

PART 322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 322.6—Walsh-Healey Public Contracts Act

Sec.
322.604 Exemptions.
322.604-2 Regulatory exemptions.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 322.6—Walsh-Healey Public Contracts Act

322.604 Exemptions.

[51 FR 44294, Dec. 9, 1986]

322.604-2 Regulatory exemptions.

(c)(1) The actions required by FAR 22.604-2(c)(1) shall be exercised by the Deputy Assistant Secretary for Procurement, Assistance, and Logistics (DASPAL). Contracting offices requiring exemptions shall forward requests through normal acquisition channels to the DASPAL.

[51 FR 44294, Dec. 9, 1986; 51 FR 47353, Dec. 31, 1986]

PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 324.1—Protection of Individual Privacy

Sec.
324.100 Scope of subpart.
324.102 General.
324.103 Procedures.

Subpart 324.2—Freedom of Information Act

324.201 Authority.
324.270 Applicability.
324.271 Availability and nonavailability of specific records.
324.272 Procedures.

Subpart 324.70—Confidentiality of Information

324.7001 General.
324.7002 Policy.
324.7003 Applicability.
324.7004 Required clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14013, Apr. 9, 1984, unless otherwise noted.

Subpart 324.1—Protection of Individual Privacy

324.100 Scope of subpart.

This subpart implements 45 CFR Part 5b, Privacy Act Regulations, and FAR Subpart 24.1, Protection of Individual Privacy, which implement the Privacy Act of 1974 (Pub. L. 93-579, December 31, 1974; 5 U.S.C. 552a) and OMB Circular No. A-108, July 9, 1975.

324.102 General.

(a) It is the Department's policy to protect the privacy of individuals to the maximum possible extent while permitting the exchange of records required to fulfill the Department's administrative and program responsibilities and its responsibilities for disclosing records to which the general public is entitled under the Freedom of Information Act (5 U.S.C. 552). The Privacy Act of 1974 and the Department's implementation under 45 CFR Part 5b apply "when an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish any agency function . . ." The key factor is whether a departmental function is involved. Therefore, the Privacy Act requirements apply to a departmental contract when, under the contract, the contractor must maintain or operate a system of records to accomplish a departmental function.

(e) The program official, and, as necessary, the official designated as the activity's Privacy Act Coordinator and the Office of General Counsel, shall determine the applicability of the Act to each proposed acquisition. The program official is required to include a statement in the request for contract indicating whether the Privacy Act is or is not applicable to the proposed acquisition.

(f) Whenever the contracting officer is informed that the Privacy Act is not applicable, but the resultant contract will involve the collection of individually identifiable personal data by the contractor, the contracting officer shall include provisions to protect the confidentiality of the records and the privacy of individuals identified in the records (see Subpart 324.70).

324.103 Procedures.

(a) All requests for contract shall be reviewed by the contracting officer to determine whether the Privacy Act requirements are applicable. If applicable, the contracting officer shall include the solicitation notification and contract clause required by FAR 24.104 in the solicitation, and the contract clause in the resultant contract. In addition, the contracting officer shall ensure that the solicitation notification, contract clause, and other pertinent information specified in this subpart are included in any contract modification which results in the Privacy Act requirements becoming applicable to a contract.

(b)(1) The contracting officer shall identify the system(s) of records on individuals in solicitations, contracts, and contract modifications to which the Privacy Act and the implementing regulations are applicable.

(2) The contracting officer shall include a statement in the contract notifying the contractor that the contractor and its employees are subject to criminal penalties for violations of the Act (5 U.S.C. 552a(i)) to the same extent as employees of the Department. The statement shall require that the contractor assure that each contractor employee knows the prescribed rules of conduct, and each contractor employee is aware that he/she can be subjected to criminal penalties for violations of the Act. The contracting officer shall provide the contractor with a copy of the rules of conduct and other requirements set forth in 45 CFR 5b.

(c) The contracting officer shall include in the contract the disposition to be made of the system(s) of records on individuals upon completion of performance of the contract. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to the Department, or to keep the records but take certain measures to keep the records confidential and protect the individuals' privacy.

(d) Whenever an acquisition is determined to be subject to the Privacy Act requirements, a "system notice," prepared by the program official and describing the Department's intent to establish a new system of records on individuals, to make modifications to an existing system, or to disclose information in regard to an existing system, is required to be published in the FEDERAL REGISTER. A copy of the "system notice" shall be attached to the request for contract or purchase request. If a "system notice" is not attached, the contracting officer shall inquire about its status and shall obtain a copy from the program official for inclusion in the contract file. If a "system notice" has not been published in the FEDERAL REGISTER, the contracting officer may proceed with the acquisition but shall not award the contract until the "system notice" is published, and publication is verified by the contracting officer.

Subpart 324.2—Freedom of Information Act

324.201 Authority.

The Department's regulation implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, is set forth in 45 CFR Part 5. This subpart implements those aspects of the FOIA and 45 CFR Part 5 that apply to acquisition and contract records.

324.270 Applicability.

(a) The FOIA and 45 CFR Part 5 provide that Government records (see 45 CFR 5.5 for the definition of "records") are generally to be made available to the public after receipt of a request. However, the Department may withhold records if they fall within one or more of the specific categories exempted from disclosure by the FOIA.

(b) The FOIA exemption most often cited to deny disclosure of acquisition and contract records is exemption (b)(4)(5 U.S.C. 552(b)(4)), i.e., "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Trade secrets, within the meaning of 18 U.S.C. 1905, are exempt from disclosure. Commercial and financial information can be exempted from disclosure only if it is privileged and confidential and is obtained from a person (source) by the Government. Commercial or financial information is generally considered confidential under exemption (b)(4) if disclosure is likely to have either of the following effects:

(1) It would impair the Government's ability to obtain necessary information in the future; or

(2) It would cause substantial harm to the competitive position of the source from whom the information was obtained.

(c) Use of a restrictive legend on a document by the submitter of the document that purportedly identifies confidential information does not by itself place the document under an exemption. (See 324.272, below, for procedures to be followed by the contracting officer, and 315.413 for the treatment of data in proposals.)

324.271 Availability and nonavailability of specific records.

Subpart F of 45 CFR Part 5 identifies specific types of records that may or may not be disclosed under the FOIA. Refer to 5.71 (c) and (d) for general guidance and 5.72 (c), (d), and (e) for details on specific acquisition records. In addition, the Appendix to 45 CFR Part 5 provides a list of examples of specific records or information concerning contracts which are generallyand those which are not generally available under the FOIA. Note that these are general guidelines and application may vary based upon the circumstances of each individual case.

324.272 Procedures.

(a) The contracting officer, upon receiving an FOIA request, shall follow Department and operating division procedures. As necessary, actions should be coordinated with the cognizant Freedom of Information (FOI) and the Office of General Counsel.

(b) When evaluating a FOIA request for a contract or acquisition record which was obtained wholly or in part from a source outside the Department, the contracting officer must consider the origin of the record, its subject matter, and whether it was submitted under a restrictive legend. In instances when it is not certain whether a record or a portion of a record is to be withheld or disclosed under the FOIA, the following procedures shall be followed.

(1) If there is reason to believe the source may object to release of the record or part of the record, the contracting officer or FOI official shall notify the source in writing that a request has been received, and the Department is considering release of the requested material. The written notification must advise the source of the specific requested material and require that the source provide a justification for withholding the material under an exemption of the FOIA if the source objects to its release. The notification must inform the source that the justification should explain in detail how disclosure of the requested material would result in significant harm to the competitive position of the source or benefit its competitors. The notification must also advise the source that the justification must be provided to the contracting officer or FOI official within five (5) working days from the date of the written notification.

(2) Based on the justification submitted by the source in response to the notification described above and any other pertinent information, the contracting officer and the cognizant FOI official, in consultation with the Office of General Counsel, if necessary, shall consider whether to withhold the record or portions of the record from disclosure. Only the FOI official is authorized to make the determination to withhold the record or portions of the record from disclosure.

(3) If the source objects to the release of the information but the FOI official disagrees with the justification for withholding, the FOI official will notify the source and the requestor in writing of the determination. The notification to the source must include a copy of the material marked as the Department proposes to release it and must state that release will be made five (5) working days from the date of that notification.

Subpart 324.70—Confidentiality of Information

324.7001 General.

In the performance of certain HHS contracts, it is necessary for the contractor to generate data, or be furnished data by the Government, which is about individuals, organizations, or Federal programs. This subpart and the accompanying contract clause require contractors to prudently handle disclosure of certain types of information not subject to the Privacy Act or the HHS human subject regulations set forth in 45 CFR Part 46. This subpart and contract clause address the kinds of data to be generated by the contractor and/or data to be furnished by the Government that are considered confidential and how it should be treated.

324.7002 Policy.

It is the policy of HHS to protect personal interests of individuals, corporate interests of non-governmental organizations, and the capacity of the Government to provide public services when information from or about individuals, organizations, or Federal agencies is provided to or obtained by contractors in performance of HHS contracts. This protection depends on the contractor's recognition and proper handling of such information. As a result, the "Confidentiality of Information" contract clause was developed.

324.7003 Applicability.

(a) The "Confidentiality of Information" clause, set forth in 352.24-70, should be used in solicitations and resultant contracts whenever the need exists to keep information confidential. Examples of situations where the clause may be appropriate include:

(1) Studies performed by the contractor which generate information or invlove Government-furnished information that is personally identifiable, such as medical records, vital statistics, surveys, and questionnaires;

(2) Contracts which involve the use of salary structures, wage schedules, proprietary plans or processes, or confidential financial information of orga-

nizations other than the contractor's; and

(3) Studies or research which may result in preliminary or unvalidated findings which, upon disclosure to the public, might create erroneous conclusions which, if acted upon, could threaten public health or safety.

(b) With regard to protecting individuals, this subpart and contract clause are not meant to regulate or control the method of selecting subjects and performing studies or experiments involving them. These matters are dealt with in the HHS regulation entitled "Protection of Human Subjects," 45 CFR Part 46. If a system of records under contract, or portions thereof, is determined to be subject to the requirements of the Privacy Act, in accordance with FAR 24.1 and 324.1 and Title 45 CFR Part 5b, the procedures cited in those references are applicable and the Privacy Act contract clause shall be included in the contract. If the contract also involves confidential information, as described herein, which is not subject to the Privacy Act, the contract shall include the "Confidentiality of Information" clause in addition to the Privacy Act clause.

324.7004 Required clause.

The clause set forth in 352.224-70 shall be included in any RFP and resultant contract(s) where it has been determined that confidentiality of information provisions may apply. Any REP announcing the intent to include this clause in any resultant contract(s) shall indicate, as specifically as possible, the types of data which would be covered and requirements for handling such data.

PART 325—FOREIGN ACQUISITION

Subpart 325.1—Buy American Act—Supplies

Sec.
325.102 Policy.
325.108 Excepted articles, materials, and supplies.
325.108-70 Formats for nonavailability determinations.

Subpart 325.3—Balance of Payments Program

325.302 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14015, Apr. 9, 1984, unless otherwise noted.

Subpart 325.1—Buy American Act—Supplies

325.102 Policy.

(b) The head of the contracting activity shall make the determinations required by FAR 25.102(a) (1) through (5) and FAR 25.102(b).

[51 FR 44294, Dec. 9, 1986; 51 FR 47353, Dec. 31, 1986]

325.108 Excepted articles, material, and supplies.

(b) Articles, materials, and supplies not listed in FAR 25.108(d) may be excepted only after a written determination has been made by the head of the contracting activity. These determinations are required only in instances where it has been determined that only suppliers of foreign source end items shall be solicited. However, approvals and determinations covering individual acquisitions in the following categories may be made by the contracting officer:

(1) Acquisition of spare and replacement parts for foreign manufactured items, if the acquisition must be restricted to tghe original manufacturer or its supplier; and

(2) Acquisition of foreign drugs when it has been determined, in writing, by the responsible program official, that only the requested foreign drug will fulfill the requirement.

Formats for the above referenced written determinations are shown in 325.108-70.

325.108-70 Formats for nonavailability determinations.

(a) The following is the format for a nonavailability determination made by a contracting officer:

DETERMINATION OF NONAVAILABILITY

Pursuant to the authority contained in section 2, Title III, of the Act of March 3, 1933, popularly called the Buy American Act (41 U.S.C. 10(a-d)), and authority delegated to me by 325.108(b), I hereby find that:

(a) (Insert a description of the item or items to be acquired, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

(b) (Enter the name and address of the proposed contractor or supplier, and country of origin of the item or items.)

(c) (Include a statement of the necessity for the acquisition.)

(d) (Include a statement of facts establishing the nonavailability of a similar item or items of domestic origin. If there is no known domestic item or items which can be used as a reasonable substitute, a statement to this effect will be made.)

Based upon these findings, it is determined that the above-described item(s) is (are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it (they) is (are) manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Accordingly, the requirement of the Buy American Act that acquisition be made from domestic sources and that it be of domestic origin is not applicable to this acquisition, since the referenced acquisition is within the nonavailability exception stated in the Buy American Act. Authority is granted to acquire the above-described item(s) of foreign origin (country of origin) at an estimated total cost of $——, including duty and transportation cost to destination.

(Date) ————————————

————————————

(Contracting Officer)

(b) The following is the format for a nonavailability determination made by the head of the contracting activity. Part 1 of the determination shall be signed by the preparing authority (contracting officer of official with contracting authority), and Part 2 shall be signed by the approving authority.

DETERMINATION OF NONAVAILABILITY

Part 1

Date ————————————

Pursuant to the authority contained in Section 2, Title III, of the Act of March 3, 1933, popularly called the Buy American Act (41 U.S.C. 10(a-d)), I hereby find:

(a) (Insert a description of the item or items to be acquired, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

(b) (Insert a brief statement of the necessity for the acquisition.)

(c) (Include a statement of facts establishing the nonavailability of a similar item or items of domestic origin.)

Based upon the above showing of fact, it is determined that the above described item(s) is (are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it (they) is (are) manufactured, are not mined, produced or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(Signature) ————————————

Part 2

The requirement of the Buy American Act that acquisition be made from domestic sources and that it be of domestic origin is not applicable to the above described acquisition, since the referenced acquisition is within the nonavailability exception stated in the Act. The feasibility of foregoing the requirement or providing a United States substitute has been considered. Authority is granted to acquire the above described item(s) of foreign origin (country of origin) at an estimated total cost of $——, including duty and transportation costs to destination.

(Signature) ————————————

Subpart 325.3—Balance of Payments Program

325.302 Policy.

All determinations addressed in FAR 25.302 shall be made by the principal official responsible for acquisition (not delegable).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 330—COST ACCOUNTING STANDARDS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 330.3—CAS Contract Requirements

330.304 Waiver

(c) The requirements of FAR 30.304(c) shall be exercised by the Deputy Assistant Secretary for Procurement, Assistance, and Logistics (DASPAL). Requests for waivers shall be forwarded through normal acquisition channels to the DASPAL.

[51 FR 44294, Dec. 9, 1986]

PART 332—CONTRACT FINANCING

Subpart 332.4—Advance Payments

Sec.
332.402 General.
332.403 Applicability.
332.406 Letters of credit.
332.407 Interest.
332.409 Contracting officer action.
332.409-1 Recommendation for approval.

Subpart 332.5—Progress Payments Based on Costs

332.501 General.
332.501-2 Unusual progress payments.

Subpart 332.7—Contract Funding

332.702 Policy.
332.703 Contract funding requirements.
332.703-1 General.
332.704 Limitation of cost or funds.
332.705 Contract clauses.
332.705-2 Clauses for limitation of costs or funds.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14018, Apr. 9, 1984, unless otherwise noted.

Subpart 332.4—Advance Payments

332.402 General.

(e) The determination that the making of an advance payment is in the public interest (See FAR 32.402(c)(1)(iii)(A)) shall be made by the respective official listed in 306.501, except as follows. For OASH, the official shall be the Director, Office of Management, and for NIH, the official shall be the Associate Director for Administration.

[52 FR 27560, July 22, 1987]

332.403 Applicability.

All contracts for research work with educational institutions located in the United States shall provide for financing by use of advance payments, in reasonable amounts, unless otherwise prohibited by law.

332.406 Letters of credit.

(c)(1) A blanket determination and findings authorizing interest free advance payments under a single letter of credit has been executed and remains in effect for each of the nonprofit organizations listed in Attachment I "Single Letter of Credit Recipients and Central Point Addressees." These determinations and findings are applicable to all existing and future contracts entered into by the Department, its operating divisions, OS staff offices, and regional offices. All contracts with the listed organizations which require advance payments (whether under section 305 of the Federal Property and Administrative Services Act of 1949, as amended, or other statutory authority) shall provide for payment to be made under the appropriate letter of credit. The clause set forth in 352.232-73 shall be included in all such contracts and the cognizant fiscal office shall be apprised of its inclusion.

(2) In those instances where it is practical and feasible to finance an advance payment under a letter of credit other than one which is incorporated under a single letter of credit described in paragraph (c)(1) above, a determination and findings shall be executed by the appropriate official indicated in 306.501 if the cited authority is to be section 305 of the Federal Property and Administrative Services Act. In cases where an authority other than section 305 is to be used, a determination and findings shall be submitted to the appropriate official author-

ized by the cited statute to approve the advance payment.

(3) The Treasury Department's letter of credit method of financing advance payments shall be employed, whenever feasible. Department-wide blanket letters of credit, which apply to the financing of research contracts and grants between the institution and all activities of the Department, shall be utilized to the maximum extent practicable. Where a particular educational institution is supported by research contracts and grants with only one operating division of the Department, a single letter of credit, applicable to all research contracts and grants between the institution and that operating division may be employed.

[49 FR 14018, Apr. 9, 1984, as amended at 50 FR 23133, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 51 FR 44294, Dec. 9, 1986]

332.407 Interest.

(d) The officials referenced in 332.402(e) are authorized to make the determinations in FAR 32.407(d) and as follows. In addition to the interest-free advance payments for the types of contracts listed in FAR 32.407(d), advance payments without interest may be approved for nonprofit contracts which are without fee with educational institutions and other nonprofit organizations, whether public or private, which are for the performance of work involving health services, educational programs, or social service programs, including, but not limited to, programs such as:

(1) Community health representative services for an Indian Tribe or Band;

(2) Narcotic addict rehabilitative services;

(3) Comprehensive health care service program for Model Neighborhood programs;

(4) Planning and development of health maintenance organizations,

(5) Dissemination of information derived from educational research;

(6) Surveys or demonstrations in the field of education;

(7) Producing or distributing educational media for handicapped persons including captioned films for the deaf;

(8) Operation of language or area centers;

(9) Conduct of biomedical research and support services;

(10) Research surveys or demonstrations involving the training and placement of health manpower and health professionals, and dissemination of related information; and

(11) Surveys or demonstrations in the field of social service.

[49 FR 14018, Apr. 9, 1984, as amended at 51 FR 44294, Dec. 9, 1986; 52 FR 27560, July 22, 1987]

332.409 Contracting officer action.

332.409-1 Recommendation for approval.

The information in FAR 32.409-1 (or FAR 32.409-2) shall be transmitted to the approving official cited in 332.402(e) in the form of a briefing letter.

[49 FR 14018, Apr. 9, 1984, as amended at 51 FR 44294, Dec. 9, 1986; 52 FR 27560, July 22, 1987]

Subpart 332.5—Progress Payments Based on Costs

332.501 General.

[51 FR 44294, Dec. 9, 1986]

332.501-2 Unusual progress payments.

(a)(3) The approval of an unusual progress payment shall be made by the appropriate official referenced in 332.402(e).

[51 FR 44294, Dec. 9, 1986, as amended at 52 FR 27560, July 22, 1987]

Subpart 332.7—Contract Funding

332.702 Policy.

An incrementally funded contract is a contract in which the total work effort is to be performed over multiple time periods and funds are allotted to cover discernible phases or increments of performance.

(a) The incremental funding technique shall only be applied to cost-reimbursement type contracts for the acquisition of research and development services and other types of nonpersonal services such as studies, surveys, and socioeconomic demonstration projects. It shall not be applied to construction services, architect-engineer services, or services subject to the Service Contract Act of 1965, as amended. The incremental funding technique allows for contracts to be awarded for periods in excess of one year even though the total estimated amount of funds expected to be obligated for the contract are not available at the time of the contract award.

(b) It is departmental policy that contracts for projects of multiple year duration be fully funded, whenever possible, to cover the entire project. However, incrementally funded contracts may be used when:

(1) A project, which is part of an approved program, is anticipated to be of multiple year duration, but funds are not currently available to cover the entire project;

(2) The project represents a valid need of the fiscal year in which the contract is awarded and of the succeeding fiscal years of the project's duration, during which additional funds may be obligated by increasing the allotment to the contract;

(3) The project is so significant to the approved program that there is reasonable assurance that it will command a high priority for proposed appropriations to cover the entire multiple year duration; and

(4) The statement of work is specific and is defined by separate phases or increments so that, at the completion of each, progress can be effectively measured.

332.703 Contract funding requirements.

332.703-1 General.

(b) The following general guidelines are applicable to incrementally funded contracts:

(1) The estimated total cost of the project (all planned phases or increments) is to be taken into consideration when determining the requirements which must be met before entering into the contract; i.e., justification for noncompetitive acquisition, approval of award, etc.

(2) The RFP and resultant contract are to include a statement of work which describes the total project covering the proposed multiple year period of performance and indicating timetables consistent with planned phases or increments and corresponding allotments of funds.

(3) Offerors will be expected to respond to RFPs with technical and cost proposals for the entire project indicating distinct break-outs of the planned phases or increments.

(4) Negotiations will be conducted based upon the total project, including all planned phases or increments, and the multiple year period of performance.

(5) Sufficient funds must be obligated under the basic contract to cover no less than the first year of performance, unless the contracting officer determines it is advantageous to the Government to fund the contract for a lesser period. In that event, the contracting officer shall ensure that the obligated funds are sufficient to cover a complete phase or increment of performance representing a material and measurable part of the total project, and the contract period shall be reduced accordingly.

(6) Because of the magnitude of the scope of work and multiple year period of performance under an incrementally funded contract, there is a critical need for careful program planning. Program planning must provide for appropriate surveillance of the contractor's performance and adequate controls to ensure that projected funding will not impinge on the program office's ability to support, within anticipated appropriations, other equally important contract or grant programs.

(7) An incrementally funded contract must contain precise requirements for progress reports to enable the project officer to effectively monitor the contract. The project officer should be required to prepare periodic performance evaluation reports to facilitate the program office's ultimate decision to allot additional funds under the contract.

332.704 Limitation of cost or funds.

For detailed instruction regarding administrative actions in connection with anticipated cost overruns, see Subpart 342.71.

332.705 Contract clauses.

332.705-2 Clauses for limitation of costs or funds.

(c) (1) When using the Limitation of Funds clause (FAR 52.232-22) in the solicitation and resultant incrementally funded contract, the contracting officer shall insert the following legend between the clause title and the clause text:

(This clause supersedes the Limitation of Cost clause found in the General Provisions of this contract.)

(2) The contracting officer shall also include a clause reading substantially as that shown in 352.232-74 in the Special Provisions of the resultant incrementally funded contract.

(3) The request for proposals must inform prospective offerors of the Department's intention to enter into an incrementally funded contract. Therefore, the contracting officer shall include the provision at 352.232-75 in the request for proposals whenever the use of incremental funding is contemplated.

PART 333—PROTESTS, DISPUTES, AND APPEALS

Subpart 333.1—Protests

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333.213 Obligation to continue performance.
333.214 Contract clause.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 333.1—Protests

Source: 50 FR 23133, May 31, 1985 (interim rule), and 50 FR 38004, Sept. 19, 1985 (final rule), unless otherwise noted.

333.101 Definitions.

"Filed," as used in this subpart, means receipt in the contracting office, the immediate Office of the Secretary, the General Accounting Office (GAO), or the General Services Board of Contract Appeals (GSBCA), as the case may be.

333.102 General.

(a) Contracting officers shall consider all protests or objections regarding the award of a contract, whether submitted before or after award, provided the protests are filed in a timely manner and are submitted by interested parties. To be considered timely, protests based on alleged improprieties in any type of solicitation which are apparent before bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In the case of negotiated acquisitions, alleged improprieties which do not exist in initial solicitations, but which are subsequently incorporated by amendment, must be protested not later than the next closing date for receipt of proposals following the incorporation. In other cases, protests shall be filed not later than ten (10) Federal Government working days after the basis for protest is known or should have been known, whichever is earlier. Provided a timely protest has been filed initially with the contracting officer, any subsequent protest to the Secretary or GAO filed within ten (10) Federal Government working days of notification of adverse action will be considered. Written confirmation of all oral protests shall be requested from protestants and must be timely filed.

(c) (1) The Office of Procurement and Logistics Policy (OPLP), OPAL, OASMB, OS, has been designated as the headquarters office to serve as the liaison for protests lodged with GAO. Within OPLP, the Departmental Protest Control Officer (DPCO) has been designated as the individual to be contacted by GAO.

(2) The Office of General Counsel—Business and Administrative Law Division (OGC-BAL) has been designated to serve as the liaison for protests lodged with the GSBCA.

(3) Each contracting activity shall designate a protest control officer to serve as an advisor to the contracting officer and to monitor protests from the time of initial notification until the protest has been resolved. The protest control officer should be a senior acquisition specialist in the headquarters acquisition staff office. In addition, contracting activities should designate similar officials within their principal components to the extent practicable and feasible. A copy of each appointment and termination of appointment of protest control officers shall be forwarded to the Director, OPLP.

333.103 Protests to the agency.

(a) The contracting officer is authorized to make the determination, using the criteria in FAR 33.103(a), to award a contract notwithstanding the protest after obtaining the concurrence of the contracting activity's protest control officer and OGC-BAL. If the protest has been lodged with the Secretary, is addressed to the Secretary, or requests referral to the Secretary, approval shall also be obtained from the Director, OPLP before making the award.

(b) The contracting officer shall require written confirmation of any oral protest. To be considered timely, the written confirmation must be filed in accordance with the applicable provisions in 333.102(a).

(1) In the following cases, written protests received by the contracting officer before award shall be forwarded, through acquisition channels, to the DPCO for processing. Files concerning these protests shall be submitted, in duplicate, by the most expeditious means, marked "IMMEDIATE ACTION—PROTEST BEFORE AWARD", and contain the documentation referenced in 333.104(a)(2).

(i) The protestant requests referral to the Secretary of Health and Human Services;

(ii) The protest is known to have been lodged with the Comptroller General or the Secretary, or is addressed to either; or

(iii) The contracting officer entertains some doubt as to the proper action regarding the protest or believes it to be in the best interest of the Government that the protest be considered by the Secretary or the Comptroller General.

Otherwise, submissions of protests to the DPCO may be dispensed with by the contracting officer if he/she is reasonably satisfied that the protest is groundless. In this instance, the contracting officer, with the concurrence of the contracting activity's protest control officer and OGC-BAL, may disallow the protest.

(2) Protests received after award shall be treated as indicated in 333.103(b)(1), above; however, if the files are to be submitted to the DPCO for action, they shall be marked "IMMEDIATE ACTION—PROTEST AFTER AWARD".

333.104 Protests to GAO.

(a) *General.* (1) A protestor shall be required to furnish a copy of its complete protest to the contracting officer no later than the first working day after the protest is filed with GAO. Immediately upon receiving a copy of the complete protest, the contracting officer shall telephonically notify the contractng activity's protest control officer, who, in turn, shall immediately notify the DPCO. The contracting officer shall provide the name of the protestor, the solicitation number, the date and time the protest was received from the protestor, and any other significant information.

(2) Protests lodged with GAO, whether before or after award, shall be processed by the DPCO. Protest files shall be prepared by the contracting office and distributed as follows: two copies to the DPCO, one copy to the contracting activity's protest control officer, and one copy to OGC-BAL. Files shall include the following documentation:

(i) The contracting officer's statement of facts and circumstances, including a discussion of the merits of the protest, and conclusions and recommendations, including documentary evidence on which they are based.

(ii) A copy of the IFB or RFP.

(iii) A copy of the abstract of bids or proposals.

(iv) A copy of the bid or proposal of the successful offeror to whom award has been made or is proposed to be made.

(v) A copy of the bid or proposal of the protestant, if any.

(vi) The current status of award. When award has been made, this shall include whether performance has commenced, shipment or delivery has been made, or a stop work order has been issued.

(vii) A copy of any mutual agreement to suspend work on a no-cost basis, when appropriate (see FAR 33.104(c)).

(viii) Copies of the notice of protest given offerors and other parties when the notice is appropriate (see FAR 33.104(a)(3)).

(ix) A copy of the technical evaluation report required by 315.608-76, when applicable, and a copy of each evaluator's rating for all proposals.

(x) A copy of the negotiation memorandum, when applicable (see 315.672).

(xi) The name and telephone number of the person in the contracting office who may be contacted for information relevant to the protest, and

(xii) Any document which is referred to in the contracting officer's statement of facts.

The files shall be assembled in an orderly manner and shall include an index of enclosures.

(3) The contracting officer is responsible for making the necessary notifications referenced in FAR 33.104(a)(3). Copies of the views of interested parties submitted in response to the notifications shall be immediately provided to the DPCO upon receipt by the contracting officer.

(4) The contracting officer shall furnish the protest file containing the documentation specified in 333.104(a)(2), except item (i), to the DPCO within twelve (12) work days from receipt of the protest. The contracting officer shall provide the documentation required by item (i) of 333.104(a)(2) to the DPCO within nineteen (19) work days from receipt of the protest. (The contracting activity's protest control officer may provide a written opinion and recommendation on the protest to the DPCO within nineteen (19) work days from receipt of the protest by the contracting officer.) The contracting officer shall clearly identify any documents or portions of documents he or she desires to withhold from the protester, and shall include justification for the withholding of each document or portion of a document in the contracting officer's statement of facts. Since the statute allows only a short time period in which to respond to protests lodged with GAO, the contracting officer shall handle each protest on a priority basis.

The DPCO shall prepare the report and submit it and the protest file to GAO in accordance with FAR 33.104(a)(4).

(5)(i) The DPCO shall take the necessary actions specified in FAR 33.104(a)(5)(i) after receiving all the documentation required by 333.104(a)(2) from the contracting officer.

(ii) Since the DPCO will furnish the report to GAO, the protestor, and other interested parties, comments on the report from the protester and other interested parties will be requested to be sent to the DPCO.

(6) The Office of Procurement and Logistics Policy (OPLP), OPAL, has been designated as the headquarters office, and the DPCO as the individual, that GAO should contact concerning all protests lodged with GAO.

(b) *Protests before award.* (1) To make an award notwithstanding a protest, the contracting officer shall prepare a finding using the criteria in FAR 33.104(b)(1), have it executed by the head of the contracting activity, and forward it, along with a written request for approval to make the award, to the Director, OPLP.

(2) If the request to make an award notwithstanding the protest is approved by the Director, OPLP, the DPCO shall notify GAO. Whether the request is approved or not, the DPCO shall telephonically notify the contracting activity's protest control offi-

cer of the decision by the Director, OPLP, and the contracting activity's protest control officer shall immediately notify the contracting officer. The DPCO shall confirm the decision by memorandum to the contracting activity's protest control officer.

(4) The contracting office shall prepare the protest file in accordance with 333.104(a)(2), and forward it, in duplicate, to the DPCO (see 333.104(a)(4)). The file shall be marked "IMMEDIATE ACTION—PROTEST BEFORE AWARD."

(c) *Protests after award.* (2) If the contracting officer believes performance should be allowed to continue notwithstanding the protest, a finding shall be prepared by the contracting officer, executed by the head of the contracting activity, and forwarded, along with a written request for approval, to the Director, OPLP. The same procedures for notification stated in 333.104(b)(2), above shall be followed.

(6) The contracting officer shall prepare the protest file in accordance with 333.104(a)(2), and forward it, in duplicate, to the DPCO (see 333.104(a)(4)). The file shall be marked "IMMEDIATE ACTION—PROTEST AFTER AWARD."

(d) *Findings and notice.* The contracting officer shall perform the actions required by FAR 33.104(d); however, notification to GAO shall be made by the DPCO.

(f) *Notice to GAO.* The Deputy Assistant Secretary for Procurement, Assistance, and Logistics shall be the official to comply with the requirements of FAR 33.104(f).

(h) *Express option.* When GAO invokes the express option, the contracting officer shall prepare the complete protest file as described in 333.104(a)(2), to include item (i) and deliver it (hand-carry, if necessary) to the DPCO no later than the close of business on the ninth work day after the express option is invoked. The contracting officer shall involve OGC-BAL as early as possible after receiving notification of the invocation of the express option, and obtain the concurrence of the cognizant OGC-BAL attorney prior to transmitting the protest file to the DPCO. The DPCO shall prepare the report and submit it and the protest file to GAO.

[50 FR 23133, May 31, 1985, as amended at 50 FR 38004, Sept. 19, 1985]

333.105 Protests to GSBCA.

(a)(1) The contracting officer shall give telephone notification to the DPCO, OGC-BAL, and the contracting activity's protest control officer immediately upon notification of the protest.

(2)(i) The contracting officer is responsible for complying with the requirement in FAR 33.105(a)(2)(i).

(ii) The cognizant OGC-BAL attorney is responsible for complying with the requirement stated in FAR 33.105(a)(2)(ii).

(b) As soon as possible but no later than six (6) work days after the filing of the protest, a copy of the protest file containing *all* documents (see FAR 33.105(b), especially (b)(7)), and labeled on the cover "FOR USE BY DPCO ONLY", shall be in the hands of the DPCO for review. Simultaneously, two copies of the same protest file provided to the DPCO shall be provided to the cognizant OGC-BAL attorney. These two copies shall be labeled on the cover "FOR USE BY OGC-BAL." After consultation with the cognizant OGC-BAL attorney, the DPCO shall transmit the protest file to the GSBCA.

(1) Rather than furnishing a decision, the contracting officer shall include a statement of facts and circumstances and a discussion of the merits of the protest, as well as conclusions and recommendations and documentary evidence on which they are based. These statements shall be reviewed by the cognizant OGC-BAL attorney before being finalized.

(7) The DPCO shall provide all parties with a list of documents furnished to the GSBCA for *in camera* review.

(10) The copies of the protest files to be provided to the DPCO and OGC-BAL shall also contain the documents or information specified in 333.104(a)(2)(vii) through (xii). The file shall be assembled in an orderly manner and include an index of enclosures.

(c) The cognizant OGC-BAL attorney is responsible for complying with the requirement stated in FAR 33.105(c).

(d)(1) If the protest requests a suspension of acquisition authority, the contracting officer must make this known to the DPCO, OGC-BAL and the contracting activity's protest control officer at the time of the initial telephone notification of the filing of the protest to afford an opportunity for the DPCO, OGC-BAL, principal official responsible for acquisition (PORA), and contracting officer to take appropriate action.

(2) If it can be established that the conditions stated in FAR 33.105(d)(1)(i) and (ii) are present, the contracting officer shall prepare a D&F setting forth the circumstances. The D&F shall be concurred in by the cognizant OGC-BAL attorney before being executed by the PORA (not delegable).

(g) If an appeal is to be made by the Department regarding a final decision issued by the GSBCA, it shall be made by OGC-BAL.

[50 FR 23133, May 31, 1985, as amended at 50 FR 38004, Sept. 19, 1985]

333.106 Solicitation provision and contract clause.

(a) The provision at FAR 52.233-2, Service of Protest, shall be completed by entering the name and complete mailing address of the contracting officer.

[50 FR 23133, May 31, 1985, as amended by 50 FR 38004, Sept. 19, 1985]

Subpart 333.2—Disputes and Appeals

SOURCE: 53 FR 15563, May 2, 1988, unless otherwise noted.

333.203 Applicability.

(c) The Armed Services Board of Contract Appeals (ASBCA) has been designated by the Secretary as the authorized "Board" to hear and determine disputes for the Department.

333.209 Suspected fraudulent claims.

The contracting officer shall submit any instance of a contractor's suspected fraudulent claim to the Office of the Inspector General for investigation.

333.210 Contracting officer's authority.

The contracting officer shall refer a proposed final decision to the Office of General Counsel, Business and Administrative Law Division (OGC-BAL), or the Regional Attorney in the HHS regional office servicing the region in which the contracting officer is located, for advice as to the legal sufficiency and format before sending the final decision to the contractor. The contracting officer shall provide OGC-BAL or the Regional Attorney with the pertinent documents with the submission of each proposed final decision.

333.211 Contracting officer's decision.

(a)(2) See 333.210.

(a)(4)(v) When using the paragraph in FAR 33.211(a)(4)(v), the contracting officer shall insert the words "Armed Services" before each mention of the term "Board of Contract Appeals".

(c)(2) The contracting officer does not have jurisdiction to consider a claim from the contractor over $50,000, unless that claim has been certified.

(h) At any time within the period of appeal, the contracting officer may modify or withdraw his/her final decision. If an appeal from the final decision has been taken to the ASBCA, the contracting officer will forward his/her recommended action to OGC-BAL or the cognizant Regional Attorney with the supplement to the contract file which supports the recommended correction or amendment.

333.212 Contracting officer's duties upon appeal.

(a) Appeals shall be governed by the rules set forth in the "Rules of the Armed Services Board of Contract Appeals", or by the rules established by the U.S. Claims Court, as appropriate.

(b) OGC-BAL or the cognizant Regional Attorney is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the ASBCA. A decision by the ASBCA will be transmitted by the Government Trial Attorney to the appropriate contracting officer for compliance in accordance with the ASBCA's decision.

(c) If an appeal is filed with the ASBCA, the contracting officer shall assemble a file within 30 days of receipt of an appeal, or advice that an appeal has been filed, that consists of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent modifications, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claims in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

The contracting officer shall furnish the appeal file to the Government Trial Attorney for review and approval. After approval, the contracting officer shall prepare four copies of the file, one for the ASBCA, one for the appellant, one for the Government Trial Attorney, and one for the contracting office.

(d) At all times after the filing of an appeal, the contracting officer shall render whatever assistance is requested by the Government Trial Attorney. When an appeal is set for hearing, the concerned contracting officer, acting under the guidance of the Government Trial Attorney, shall be responsible for arranging for the presence of Government witnesses and specified physical and documentary evidence at both the pre-hearing conference and the hearing.

(e) If a contractor which has filed an appeal with the ASBCA elects to accept fully the decision from which the appeal was taken, or any modification to it, and gives written notification of acceptance to the Government Trial Attorney or the concerned contracting officer, the Government Trial Attorney will notify the ASBCA of the disposition of the dispute in accordance with Rule 27 of the ASBCA.

(f) If the contractor has elected to appeal to the U.S. Claims Court, the U.S. Department of Justice will represent the Department. However, the contracting officer shall still coordinate all actions through OGC-BAL.

333.212-70 Formats.

(a) The following format is suggested for use in transmitting appeal files to the ASBCA:

Your reference:

______

(Docket No.)

______

(Name)

Recorder, Armed Services Board of Contracts Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, Virginia 22041.

Dear (Name):

Transmitted herewith are documents relative to the appeal under Contract No.______ with the (name of contractor), in accordance with the procedures under Rule 4.

The Government Trial Attorney for this case is (Insert Division of Business and Administrative Law, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue SW., Washington, DC 20201, or Regional Attorney and office address, as appropriate).

The request for payment of charges resulting from the processing of this appeal should be addressed to: (Insert name and address of cognizant finance office.)

Sincerely yours,

Contracting Officer

Enclosures

(b) The following format is suggested for use in notifying the appellant that the appeal file was submitted to ASBCA:

(Contractor Address)

______

______

Dear ______:

An appeal file has been compiled relative to the appeal under Contract No. ______, and has been submitted to the Armed Services Board of Contract Appeals (ASBCA). The enclosed duplicate of the appeal file is identical to that submitted to the Board, except that contract documents which you already have may have been excluded.

You may furnish or suggest any additional information deemed pertinent to the appeal to the Armed Services Board of Contract Appeals according to their rules.

The ASBCA will provide you with further information concerning this appeal.

Sincerely yours,

Contracting Officer

Enclosure

333.213 Obligation to continue performance.

(a) The Disputes clause at FAR 52.233-1 shall be used without the use of Alternate I. However, if the contracting officer determines that the Government's interest would be better served by use of paragraph (h) in Alternate I, he/she must request approval for its use from the Director, Office of Procurement and Logistics Policy (through normal acquisition channels).

333.214 Contract clause.

The clause at FAR 52.233-1 shall be used in all circumstances except as indicated in 333.213.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 334—MAJOR SYSTEM ACQUISITION

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

334.003 Agency head responsibilities.

The Department's implementation of OMB Circular No. A-109 may be found in Chapter 1-150 of the General Administration Manual.

[49 FR 14020, Apr. 9, 1984]

PART 335—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

335.070 Cost-sharing.
335.070-1 Policy.
335.070-2 Amount of cost-sharing.
335.070-3 Method of cost-sharing.
335.070-4 Institutional cost-sharing agreements.
335.070-5 Contract clauses.
335.070-6 Contract award.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14020, Apr. 9, 1984, unless otherwise noted.

335.070 Cost-sharing.

335.070-1 Policy.

(a) In addition to utilizing cost-sharing type contracts when required by statute, the desirability of utilizing this type of contract, when authorized should also be considered under certain circumstances when not required by statute. Contractors should be encouraged to contribute to the cost of performing research where there is a probability that the contractor will receive present or future benefits from participation, such as, increased technical know-how, training to employees, acquisition of equipment, use of background knowledge in future contracts, etc. Cost-sharing is intended to serve the mutual interest of the Government and the performing organization by helping to assure efficient utilization of the resources available for the conduct of research projects and by promoting sound planning and prudent fiscal policies by the performing organization. If cost-sharing is not required by statute, encouragement should be given to organizations to contribute to the cost of performing research under research contracts unless the contracting officer determines that a request for cost-sharing would not be appropriate because of the following circumstances:

(1) The particular research objective or scope of effort for the project is specified by the Government rather than proposed by the performing organization. This would usually include any formal Government requests for proposals for a specific project.

(2) The research effort has only minor relevance to the non-Federal activities of the performing organization, and the organization is proposing to undertake the research primarily as a service to the Government.

(3) The organization has little or no non-Federal sources or funds from which to make a cost contribution. Cost-sharing should generally not be requested if cost-sharing would require the Government to provide funds through some other means (such as fees) to enable the organization to cost-share. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to make a cost contribution.

(b) Cost-sharing may be negotiated in either of two ways. When cost-sharing is negotiated on a contract by contract basis, the responsibility for negotiating the cost-sharing arrangement is that of the contracting officer. In the case of institutional cost-sharing arrangements (see 335.070-4), the responsibility for negotiating cost-sharing is that of the Office of the Assistant Secretary for Health. Each research contract file should show whether the contracting officer considered cost-sharing appropriate for that particular contract and, except when an institutional cost-sharing agreement is applicable, in what amount. If cost-sharing was not considered appropriate, the file must indicate the factual basis for that decision, e.g., "Because the contractor will derive no benefits from this award that can be applied to its commercial activities, cost-sharing is not considered appropriate." The contracting officer may wish to coordinate with the project officer before documenting this decision.

(c) If the contracting officer considers cost-sharing to be appropriate for a research contract and the contractor refuses to accept this type of contract, the award may be made without cost-sharing, except when cost-sharing is required by statute, if the contracting officer concludes that payment of the full cost of the research effort is necessary in order to obtain the services of that particular contractor.

[49 FR 14020, Apr. 9, 1984; 49 FR 36110, Sept. 14, 1984]

335.070-2 Amount of cost-sharing.

When cost-sharing is required by statute or determined to be appropriate, the following guidelines shall be utilized in determining the amount of cost participation by the contractor, except where an institutional cost-sharing agreement is applicable:

(a) Cost participation by educational institutions and other not-for-profit or nonprofit organizations should normally be at least 1 percent of the total project cost. In many cases, cost-sharing of less than 5 percent of the total project cost would be appropriate in view of the organizations' nonprofit status and their normally limited ability to recover the cost of such participation from non-Federal sources. However, in some cases, it may be appropriate for educational institutions to provide a higher degree of cost-sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members (or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities). The percentages stated above are not intended as a substitution for those set forth in any legislation and are not to be used in lieu of those contained in that legislation.

(b) The amount of cost participation by commercial or industrial organizations should depend to a large extent on whether the research effort or results are likely to enhance the performing organization's capability, expertise, or competitive position, and the value of such enhancement to the performing organization. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from their research under Federal agreements. Therefore, cost participation by commercial or industrial organizations could reasonably range from as little as 1 percent or less of the total project cost, to more than 50 percent of the total project cost.

(c) If the performing organization will not acquire title to or the right to use inventions, patents, or technical information resulting from the research project, it would generally be appropriate to obtain less cost-sharing than in cases in which the performer acquires such rights.

(d) When cost-sharing is required by statute, cost participation of less than 1 percent may be appropriate if consistent with the provisions of the statute, and:

(1) A formal request for proposal is issued;

(2) The contractor proposes to perform the research primarily as a service to the Government; or

(e) The contractor has little or no non-Federal sources of funds from which to make a cost contribution.

(3) A fee or profit will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost-sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit in the research. However, if the research is expected to be of only minor value to the performing organization and if cost-sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing the costs of the project.

(f) The organization's participation may be considered over the total term of the project so that a relatively high contribution in one year may be offset by a relatively low contribution in another.

(g) A relatively low degree of cost-sharing may be appropriate if, in the view of the operating divisions or their subordinate elements, an area of research requires special stimulus in the national interest.

(h) In the final analysis, the amount of cost participation should reflect the mutual agreement of the parties, provided that it is consistent with any statutory requirements.

335.070-3 Method of cost-sharing.

Cost-sharing on individual contracts may be accomplished either by a contribution of part or all of one or more elements of allowable cost of the work being performed, or by a fixed amount or stated percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocations to other grants or contracts as part of any independent research and development program).

[49 FR 14020, Apr. 9, 1984. Correctly designated at 49 FR 36110, Sept. 14, 1984]

335.070-4 Institutional cost-sharing agreements.

(a) An institutional cost-sharing agreement covers the aggregate of some or all of the research projects supported by HHS research contracts and grants at a given performing organization. With respect to contracts, these agreements will apply only to cost-sharing type contracts resulting from unsolicited proposals and awarded without fee or profit. Eligibility for institutional cost-sharing agreements is limited to nonprofit institutions of higher education and other public or private nonprofit or not-for-profit organizations. Usually, a single agreement will cover all applicable research projects at a given performing organization; however, in unusual cases, separate agreements for individual departments or locations of the performing organization may be negotiated if deemed advantageous.

(b) The institutional cost-sharing agreements establish an overall sharing ratio applicable to the aggregate of all covered projects. Individual awards will incorporate the institutional agreement by reference, but will not establish a specific sharing ratio for the individual project. The amount of sharing on any particular project will therefore be left to the discretion of the performing organization, and relatively high contributions on some projects may offset relatively low contributions on other projects, provided that the agreed aggregate contribution is made during each of the contractor's fiscal years, and a contribution, even if nominal, is made to each covered project.

(c) The Public Health Service shall be responsible for negotiating all HHS institutional cost-sharing agreements. Agreements, when negotiated, will be binding upon all HHS activities. Eligible contractors wishing to negotiate institutional cost-sharing agreements should contact the Division of Grants and Contracts, Office of Resource Management, Public Health Service, Room 18 A 19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

(1) All necessary implementing instructions to cover matters such as content of proposals, format of agreements, documentation, etc. shall be issued by the Public Health Service, subject to the prior approval of the Office of Procurement, Assistance and Logistics.

(2) The Public Health Service shall provide the Office of Procurement, Assistance and Logistics and the Department's operating divisions with current listings of all institutional cost-sharing agreements, indicating the date on which they became effective with respect to contracts. Copies of individual agreements will be made available to the Department's other activities upon request. Each activity shall designate only one individual who shall be authorized to make such requests.

(d) The amount of cost-sharing negotiated under an institutional cost-sharing agreement will be determined in accordance with the appropriate guidelines contained in "A Guide to Institutional Cost Sharing Agreements" issued by the Office of Resource Management, PHS. The extent to which the performing organization shared in the costs of HHS-sponsored research in the past, and its anticipated ability to do so in the future, should also be taken into account.

335.070-5 Contract clauses.

Clauses for cost sharing in individually negotiated contracts or under institutional agreements are set forth in 352.232-71.

335.070-6 Contract award.

In consonance with the Department's objectives of competition and support of the small business program, award of contracts should not be made solely on the basis of ability or willingness to cost-share. Awards should be made primarily on the contractor's competence and only after adequate competition has been obtained among large and small business organizations whenever possible. The offeror's willingness to share costs should not be considered in the technical evaluation process but as a business consideration, which is secondary to selecting the best qualified source.

PART 337—SERVICE CONTRACTING

Subpart 337.1—Service Contracts—General

Sec.
337.101 Definitions.
337.103 Contracting officer responsibility.
337.104 Personal services contracts.
337.109 Services of quasi-military armed forces.

Subpart 337.2—Consulting Services

337.204 Policy.
337.270 Consulting services reporting.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14022, Apr. 9, 1984, unless otherwise noted.

Subpart 337.1—Service Contracts—General

337.101 Definitions.

"Service contract." A contract may require the furnishing of both property and services, such as a research and development contract which requires a final report. In a case such as this, this subpart will apply to the extent that the furnishing of services is involved. Other examples of service contracts include training and education, surveys and data collection, data processing, medical services, and stenographic services.

337.103 Contracting officer responsibility.

(b) Contract actions for the services of experts and consultants are also exempt from the requirements of FAR Part 37.103(a)(3); they are to be certified in accordance with the provisions in General Administration Manual Chapter 8-15.

(c) For negotiated acquisitions, the determination shall be included as a statement in the negotiation memorandum. For sealed bid acquisitions, the determination shall be included as a separate statement in the contract file.

(d) In most cases, gathering the information and data on which to base the determination should be a joint effort between contracting and program personnel. The contracting officer shall request the advice of the Office of General Counsel and/or the personnel office before processing any request to acquire services if there is doubt as to whether an employer-employee relationship would be involved in performance of the contract.

[49 FR 14022, Apr. 9, 1984, as amended at 50 FR 23126, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

337.104 Personal services contracts.

(a) As indicated in FAR 37.104, the paramount consideration in determining if an employer-employee relationship exists is the presence of direction or supervision by Government personnel of contractor employees, as a result of either the inherent nature of the service or the manner in which the service is provided. A personal service relationship exists if this direction or supervision is necessary to:

(1) Adequately protect the Government's interest;

(2) Retain control of the function involved; and/or

(3) Retain full personal responsibility by a duly authorized Federal officer or employee for the function supported.

(c)(2) The degree of supervision necessary to establish an employer-employee relationship is relatively continuous, close supervision. Sporadic supervision is not sufficient to constitute an employer-employee relationship. (In determining whether the Government rather than the contractor exercises "relatively continuous, close supervision" of contractor personnel, the fact that an engineer, for example, may require less supervision and may exercise more independence of judgment than a food service worker is not itself determinative. If the Government takes over that degree of supervision that the contractor would otherwise exercise over either individual, the relationship created between the Government and either individual is tantamount to that of employer and employee.)

(d) The likelihood of the existence of an employer-employee relationship increases as the number and extent of the elements in FAR 37.104(d) increases. However, the mere existence of these elements does not constitute an employer-employee relationship unless continuous, close supervision exists. In determining the presence of the referenced elements, relevant factors including the following shall be considered:

(1) *The nature of the work.* (i) If the Government can use Federal personnel to perform the required work, or if the Government has rights to the specialized knowledge or equipment which is needed to perform the work;

(ii) Whether the services represent the discharge of a Government function which calls for the exercise of personal judgment and discretion on behalf of the Government (This factor, if present in sufficient degree, may alone render the service personal in nature.); and/or

(iii) If the services are to be a one-time occurrence (or a continuing requirement of short term duration).

(2) *Contractual provisions concerning the contractor's employees.* (i) To what extent the Government specifies the qualifications of, or has the right to approve, individual contractor employees (other than the Government's right to approve or disapprove new key personnel, remove key personnel, grant or deny security clearances, and provide for necessary health qualifications). (Also, it is permissible for the Government to specify the technical and experience qualifications of contractor employees, if this is necessary to assure satisfactory performance.);

(ii) To what extent the Government can assign tasks to, and prepare work schedules for, contractor employees during performance of the contract. (This does not preclude inclusion in the contract of work schedules for the contractor—but not individual employees—or the establishment of a time of performance for orders issued under a requirement or other indefinite delivery-type contract.);

(iii) To what extent the Government can supervise or control the method in which the contractor performs the service, the number of people that will be employed, the specific duties of individual employees, and similar details. (However, it is permissible to require that contractor employees comply with regulations for the protection of life and property. Also, it is permissible to recommend a specific number of people the contractor may employ, if this is necessary to assure performance; but in that event, the contract must specify that this does not in any way minimize the contractor's obligation to use as many employees as are necessary for proper contract performance.);

(iv) If the Government can review performance of each individual contractor employee (as opposed to reviewing the final product after completion of the work.); and/or

(v) If the Government has the right to have contractor employees removed from the job for reasons other than misconduct or security.

(3) *Other provisions of the contract.* (i) Whether the contractor undertakes a specific task or project that is definable either at the inception of the contract or at some point during performance, or whether the work is defined on a day-to-day basis. (However, this does not preclude use of a requirement or other indefinite delivery-type contract, provided the nature of the work is specifically described in the contract, and orders are formally issued to the contractor rather than to individual employees.);

(ii) Whether payment will be for results accomplished or solely according to time worked. (This is a factor which might be useful in a doubtful case, but should not in itself create doubt about services which are otherwise clearly nonpersonal.); and/or

(iii) Whether Government office or working space, facilities, equipment, and supplies will be used for contract performance. (This is a factor which might be useful in a doubtful case, but should not in itself create doubt about services which are otherwise clearly nonpersonal.).

(4) *Administration of the contract.* (i) If contractor employees are used interchangeably with Government personnel; and/or

(ii) If contractor employees are integrated into the Government's organizational structure.

(e) and (f) Reserved.

(g) The following are examples of personal and nonpersonal services, but are illustrative only and are not to be used as the basis for determination in any specific case.

(1) The following are examples of personal services contracts:

(i) A contract to furnish ordinary, day-to-day, stenographic and secretarial services in a Government office under direct Government supervision.

(ii) A contract for the testing of a substance where the project officer visits the contractor's facility several times each week to consult with the principal investigator, review data, specify methods of quality control, specify testing to be done, and provide instruction to investigators.

(iii) A contract for the performance of a function which management must perform in order to retain essential control over the conduct of agency programs (e.g., negotiating contract amounts).

(2) The following are examples of nonpersonal services contracts:

(i) A contract for technical assistance work requiring specialized equipment and trained personnel unavailable to the Government. The contractor performs work described in the contract free of Government supervision, and does not act on behalf of the Government.

(ii) A contract with an individual for delivery of lectures without Government supervision (even if they are to be given on specific dates, or on specialized subjects, or if payment will be by the hour).

(iii) A fixed price contract for janitorial services which provides for specific tasks to be performed in specific places, free of Government direction, supervision, and control over the contractor's employees.

(iv) A research and development contract providing for a level of effort which will be performed by the contractor independent of Government direction, supervision, and control.

337.109 Services of quasi-military armed forces.

As distinguished in FAR 37.109, solicitations for protective services shall include the following certification:

> The bidder/offeror certifies it is not a detective agency, nor an employee of such agency as contemplated by 5 U.S.C. 3108.

Subpart 337.2—Consulting Services

337.204 Policy.

General Administration Manual Chapter 8-15 prescribes policies and procedures concerning approvals required before contracting for expert or consulting services.

(e) Services of experts or consultants may be acquired by contract only when:

(1) The services will be nonpersonal in nature, are critical to the planning, development, operation, or evaluation of a Department program, cannot be accomplished by Government employees, and are economically available from the private sector; or

(2) The performance of the work by a consultant is directed by statute.

337.270 Consulting services reporting.

The clause set forth in 352.237-70 shall be included in every contract for expert or consulting services.

PART 339—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES

Subpart 339.70—ADP Clearances and Systems Security

Sec.

339.7001 ADP Clearances.
339.7002 ADP systems security.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486 (c).

SOURCE: 49 FR 14023, Apr. 9, 1984, unless otherwise noted.

Subpart 339.70—ADP Clearances and Systems Security

339.7001 ADP clearances.

In accordance with Chapter 4-10 of the HHS ADP Systems Manual, the Office of Management Analysis and Systems (OMAS), OASMB-OS, is responsible for the review and approval of all requests for proposed automatic data processing (ADP) systems and modifications to existing ADP systems which require the acquisition of ADP hardware, software packages, and services, and telecommunications equipment, which exceed the dollar thresholds stated in Chapter 4-10.

(a) It is the responsibility of the program office to obtain written approval from OMAS on proposed ADP acquisitions which exceed the thresholds stated in Chapter 4-10 prior to submitting the request for contract to the contracting activity.

(b) The OMAS approval document is to be attached to the request for contract when it is submitted by the program office to the contracting activity. The contracting activity shall not initiate action on the request for contract until a properly executed approval document is obtained.

339.7002 ADP systems security.

(a) *Program responsibilities.* Whenever a proposed contract action requires the design, development, maintenance, or use of an ADP system or the use of ADP resources, the program office is required to designate a responsible individual to serve as the ADP system manager who is to ensure, in coordination with the cognizant systems security officer, that ADP security requirements are met and that each contractor maintains an acceptable security program.

(b) *Contracting responsibilities.* (1) The contracting officer is responsible for ensuring that a certification of ADP systems security requirements, signed by both the ADP system manager and the ADP systems security officer, is submitted with the request for contract. The contracting officer shall not initiate action on the request for contract until the properly executed certification is received. The certification will state that the security requirements specified are reasonably sufficient for the intended application and that they comply with current Federal and HHS computer security policies, procedures, standards, and guidelines.

(2) When developing the request for proposals, the contracting officer shall include in the technical proposal instructions a statement requiring that the offeror present a detailed outline of its proposed ADP system security program which complies with the requirements of the statement of work and applicable portions of Part 6, ADP Systems Security, of the HHS ADP Systems Manual.

(3) The contracting officer shall include a special provision reading substantially as follows in all applicable solicitations and resultant contracts:

> The Contractor agrees to comply with the ADP system security requirements set forth in the system of work and applicable portions of Part 6, ADP Systems Security, of the HHS ADP Systems Manual. The Contractor further agrees to include this provision in any subcontract awarded pursuant to this prime contract.

(4) The contracting officer shall ensure that a properly executed certification confirming that the offerors comply with the necessary security requirements is attached to the technical evaluation report received from the evaluation panel before proceeding with the acquisition process. This certification must be countersigned by the officials designated in paragraph (b)(1) above and must contain a similar statement of compliance.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 342—CONTRACT ADMINISTRATION

Subpart 342.5—Postaward Orientation

Sec.

342.504 Postaward letters.

Subpart 342.7—Indirect Cost Rates

342.705 Final indirect cost rates.

Subpart 342.70—Contract Monitoring

342.7001 Purpose.
342.7002 Contract monitoring responsibilities.
342.7003 Withholding of contract payments.
342.7003-1 Policy.
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342.7100 Scope of subpart.
342.7101 Applicability.
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342.7103-1 General.
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Subpart 342.72—Payments to Contractors

342.7200 Scope of subpart.
342.7201 Definitions.
342.7202 Policy and responsibilities.
342.7203 Exemptions.
342.7204 Contract clause-general.
342.7205 Payment terms in contracts.
342.7205-1 General requirements.
342.7205-2 Invoice requirements.
342.7205-3 Receiving reports.
342.7205-4 Processing invoices.
342.7205-5 Interest penalty payments.
342.7206 Method of payment.
342.7206-1 General.
342.7206-2 Method of payment.
342.7206-3 Coordination with paying offices.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14024, Apr. 9, 1984, unless otherwise noted.

Subpart 342.5—Postaward Orientation

342.504 Postaward letters.

To the extent practicable, contracting officers should use letters to accomplish postaward orientation objectives. A postaward orientation conference should only be arranged when letters cannot resolve key issues.

Subpart 342.7—Indirect Cost Rates

342.705 Final indirect cost rates.

The Director, Division of Cost Allocation of the Regional Administrative Support Center within each HHS regional office has been delegated the authority to establish indirect cost rates, research patient care rates, and, as necessary, fringe benefit, computer, and other special costing rates for use in contracts and grants awarded to State and local governments, colleges and universities, hospitals, and other nonprofit organizations.

Subpart 342.70—Contract Monitoring

342.7001 Purpose.

Contract monitoring is an essential element of contract administration and the acquisition process. This subpart describes the Department's operating concepts regarding contract monitoring, performed jointly by the project officer and the contracting officer, to ensure that the required monitoring is performed, timely remedial action is taken when necessary, and a determination is made that contract objectives have been met.

342.7002 Contract monitoring responsibilities.

(a) Upon execution of the contract, the mutual obligations of the Government and the contractor are established by, and limited to, the written stipulations in the contract. Unless authorized by the contracting officer, HHS personnel shall not direct or request the contractor to assume any obligation or take any actions not specifically required by the contract. Only the contracting officer may impose a requirement which will result in a change to the contract. All contract changes must be directed in writing or confirmed in writing by the contracting officer.

(b) The contracting officer is responsible for assuring compliance with all terms of the contract, especially the statutory, legal, business, and regulatory provisions. Whether or not a postaward conference is held, the contracting officer shall inform the contractor by letter (if not already stipulated by contract provisions) of the authorities and responsibilities of the Government personnel with whom the contractor will be dealing throughout the life of the contract.

(c) The contracting officer must depend on program, technical, and other personnel for assistance and advice in monitoring the contractor's performance, and in other areas of postaward administration. The contracting officer must assure that responsibilities assigned to these personnel are understood and carried out. The individual roles and corresponding responsibilities typically involve, but are not limited to, the following:

(1) The role of program and technical personnel in monitoring the contract to assist or advise the contracting officer (or act as his/her representative when so designated by the contracting officer) in activities such as:

(i) Providing technical monitoring during contract performance, and issuing letters to the contractor and contracting officer relating to delivery acceptance, or rejection in accordance with the terms of the contract;

(ii) Assessing contractor performance, including inspection and testing of products and evaluation of reports and data;

(iii) Recommending necessary changes to the schedule of work and period of performance in order to accomplish the objectives of the contract. This shall be accomplished by a written request to the contracting officer, together with an appropriate justification and funds availability citation;

(iv) Reviewing invoices/vouchers and recommending approval/disapproval action by the contracting officer, to include comments regarding anything unusual discovered in the review;

(v) Reviewing and recommending approval or disapproval of subcontracts, overtime, travel, and key personnel changes; and

(vi) Participating, as necessary, in various phases of the contract closeout process.

(2) The role of the project officer in performing required aspects of the contract monitoring process. In addition to those applicable activities set forth in (c)(1) above, the project officer shall:

(i) Submit periodic reports to the contracting officer that concisely explain the status of the contract, and include recommended actions for any problems reported. Provide the contracting officer with written notification of evaluation and approval/disapproval of contract deliverables and of completion of tasks or phases. The contracting officer will, in turn, provide the contractor with written notification of approval or disapproval unless the responsibility has been delegated by the contracting officer, in which case the person responsible for such action will notify the contractor and provide a copy to the contracting officer for inclusion in the contract file;

(ii) Monitor the technical aspects of the contractor's business and technical progress, identify existing and potential problems that threaten performance, and immediately inform the contracting officer of deviations from contract objectives, or from any technical or delivery requirements, so that remedial measures may be instituted accordingly;

(iii) Provide immediate notification to the head of the program office responsible for the program whenever it is determined that program objectives are not being met, together with specific recommendations of action to be taken. A copy of the project officer's report and recommendations shall be transmitted to the contracting officer for appropriate action;

(iv) Submit, within 120 days after contract completion, a final assessment report to the contracting officer. The report should include an analysis of the contractor's performance, including the contract and program objectives achieved and missed. A copy of the final assessment report shall be forwarded to the head of the program office responsible for the program for management review and followup, as necessary; and

(v) Accompany and/or provide, when requested, technical support to the HHS auditor in the conduct of floor checks.

(3) The role of the contract administrator, auditor, cost analyst, and property administrator in assisting or advising the contracting officer in postaward administration activities such as:

(i) Evaluation of contractor systems and procedures, to include accounting policies and procedures, purchasing policies and practices, property accounting and control, wage and salary plans and rate structures, personnel policies and practices, etc.;

(ii) Processing of disputes under the Disputes clause and any resultant appeals;

(iii) Modification or termination of the contract; and

(iv) Determination of the allowability of cost charges to incentive or cost-reimbursement type contracts and progress payments under fixed-price contracts. This is especially important when award is made to new organizations or those with financial weaknesses.

(d) The contracting officer is responsible for assuring that contractor performance and contract monitoring are carried out in conformance with contract provisions. If performance is not satisfactory or if problems are anticipated, it is essential that the contracting officer take immediate action to protect the Government's rights under the contract. The contracting officer shall notify his/her immediate supervisor of problems that cannot be resolved within contract limitations and whenever contract or program objectives are not met. The notification shall include a statement of action being taken by the contracting officer.

342.7003 Withholding of contract payments.

342.7003-1 Policy.

(a) All solicitations and resultant contracts shall contain a withholding of contract payments clause and an excusable delays clause or a clause which incorporates the definition of excusable delays. These clauses are contained in the Department's contract general provisions.

(b) The transmittal letter used to convey the contract to each contractor shall contain a notice which highlights the contractor's agreement with the withholding of contract payments clause.

(c) No contract payment shall be made when any report required to be submitted by the contractor is overdue, or the contractor fails to perform or deliver work or services as required by the contract.

(d) The contracting officer shall issue a ten-day cure notice or initiate appropriate termination action for any failure in the contractor's performance as stated in the preceding paragraph (c).

342.7003-2 Procedures.

(a) The contracting officer is responsible for initiating immediate action to protect the Government's rights whenever the contractor fails to comply with either the delivery or reporting provisions of the contract. Compliance with the reporting provisions includes those reports to be submitted directly to the payment office. If such a report is not submitted on time, the contracting officer is to be notified promptly by the payment office.

(b) When the contract contains a termination for default clause, the contractor's failure to either submit any required report when due or perform or deliver services or work when required by the contract is to be considered a default in performance. In either circumstance, the contracting officer is to immediately issue a formal ten-day cure notice pursuant to the default clause. The cure notice is to follow the format prescribed in FAR 49.607 and is to include a statement to the effect that contract payments will be withheld if the default is not cured or is not determined to be excusable.

(1) If the default is cured or is determined to be excusable, the contracting officer is not to initiate the withholding action.

(2) If the default is not determined to be excusable or a response is not received within the allotted time, the contracting officer is to initiate withholding action on all contract payments and is to determine whether termination for default or other action would be in the best interest of the Government.

(c) When the contract does not contain a termination for default clause, the contractor's failure to either submit any required report when due or perform or deliver services or work when required by the contract is to be considered a failure to perform. In either circumstance, the contracting officer is to immediately issue a written notice to the contractor specifying the failure and providing a period of ten days, or a longer period as determined necessary by the contracting officer, in which the contractor is to cure the failure or establish an excusable delay. The contracting officer is to include a statement in the written notice to the effect that contract payments will be withheld if the failure is not cured or is not determined to be excusable.

(1) If the failure is cured or is determined to be excusable, the contracting officer is not to initiate the withholding action.

(2) If the failure is not determined to be excusable or a response is not received within the allotted time, the contracting officer is to initiate withholding action on all contract payments and is to determine whether termination for convenience or other action would be in the best interest of the Government.

(d) The contracting officer should consult FAR Subpart 49.4 for further guidance before taking any of the actions described in this section.

342.7003-3 Withholding payments.

(a) When making the determination that contract payments should be withheld in accordance with the Withholding of Contract Payments clause, the contracting officer is to immediately notify the servicing finance office in writing of the determination to suspend payments. The notice of suspension is to contain all elements of information required by the payment office to properly identify the contract and the applicable accounts involved.

(b) The contracting officer is to immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.

(c) When the contractor cures the default or failure, the contracting officer is to immediately notify, in writing, all recipients of the notice of suspension that the suspension is to be lifted and contract payments are to be resumed.

(d) When exercising actions regarding the withholding of payment procedures, the contracting officer must be careful not to waive any of the Government's rights when corresponding with the contractor or when taking any other actions.

Subpart 342.71—Administrative Actions for Cost Overruns

342.7100 Scope of subpart.

This subpart sets forth the procedures to be followed when a cost overrun is anticipated; i.e., the allowable actual cost of performing a cost-reimbursement type contract is expected to exceed the total estimated cost specified in the contract.

342.7101 Applicability.

This subpart applies to the administration of cost-reimbursement type contracts and the cost-reimbursement portion of other types of contracts. Nothing in this subpart shall be construed to relieve contractors from compliance with the Limitation of Cost clause or any other provisions of contracts.

342.7102 General.

Reimbursement for costs incurred under cost-reimbursement contracts shall not exceed the amount of funds obligated by the contract, unless increased by the contracting officer. Cost overruns shall be held to an absolute minimum, compatible with accomplishment of the statement of work.

342.7103 Contract administration.

342.7103-1 General.

Upon receipt of information that a contractor's accumulated cost and projected expenditures will exceed the limit of funds obligated by the contract, the contracting officer shall coordinate immediately with the appropriate program office to determine whether the contract should be modified or terminated. If the contracting officer receives information from a source other than the contractor that a cost overrun is anticipated, the contracting officer shall verify the information with the contractor, and remind the contractor of the notification requirements of the Limitation of Cost clause.

342.7103-2 Procedures.

(a) Upon notification that a cost overrun is anticipated, the contracting officer shall inform the contractor to submit a request for additional funds which is to include:

(1) Name and address of contractor.

(2) Contract number and expiration date.

(3) Contract item(s) and amount(s) creating the overrun.

(4) The elements of cost which changed from the original estimate (i.e., labor, material, travel, overhead, etc.) to be furnished in the following format:

(i) Original estimate,

(ii) Costs incurred to date,

(iii) Estimated cost to completion,

(iv) Revised estimate, and

(v) Amount of adjustment.

(5) The factors responsible for the increase, i.e., error in estimate, changed conditions, etc.

(6) The latest date by which funds must be available for commitment to avoid contract slippage, work stoppage, or other program impairment.

(b) When the contractor submits a notice of an impending overrun, the contracting officer shall:

(1) Immediately advise the appropriate program office and furnish a copy of the notice and any other data received;

(2) Request audit or cost advisory services, and technical support, as necessary, for evaluation of information and data received; and

(3) Maintain continuous follow-up with the program office in order to obtain a timely decision as to whether the work under the contract should be continued and additional funds provided, or the contract terminated. The decision of the program office must be supported by an appropriate written statement and funding authority, or a formal request for termination, when applicable. After a programming and funding decision is received from the program office, the contracting officer shall promptly notify the contractor in writing that:

(i) A specified amount of additional funds has been allotted to the contract by a contractual instrument; or

(ii) Work will be discontinued when the funds allotted to the contract have been exhausted, and that any work performed after that date is at the contractor's risk; or

(iii) The Government is considering whether additional funds should be allotted to the contract and will notify the contractor as soon as possible, but that any work performed after the funds then allocated to the contract have been exhausted is at the contractor's risk.

Timely, formal notification of the Government's intention is essential in order to preclude loss of contractual rights in the event of dispute, termination, or litigation.

(c) If program requirements permit, contracting officers should refrain from issuing any contractual documents which will require new work or an extension of time, pending resolution of an overrun or additional fund request.

342.7104 Contract modifications.

(a) Modifications to contracts containing the Limitation of Cost clause shall include either:

(1) A provision increasing the estimated or ceiling amount referred to in the Limitation of Cost clause of the contract and stating that the clause will thereafter apply in respect to the increase amount; or

(2) A provision stating that the estimated or ceiling amount referred to in

the contract is not changed by the modification and that the Limitation of Cost clause will continue to apply with respect to the amount in effect prior to the modification.

(b) A fixed-fee provided in a contract shall not be changed when funding a cost overrun. Changes in fixed-fee will be made only to reflect changes in the scope of work which justify an increase or decrease in fee.

Subpart 342.72—Payments to Contractors

342.7200 Scope of subpart.

This subpart prescribes policies and procedures relating to: (a) The requirements of the Prompt Payment Act (Pub. L. 97-177), (b) the implementation of Pub. L. 97-177 by the Office of Management and Budget (OMB) Circular No. A-125, (c) invoice requirements and matters concerning payments to contractors, and (d) wire transfer payment procedures.

342.7201 Definitions.

The terms used in this subpart have the meanings set forth below:

"Applicable interest rate" means the interest rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611).

"Business concern (Contractor)" means any person or organization engaged in a profession, trade or business; and nonprofit entities (including State and local governments, Federally recognized Indian Tribal governments, and educational institutions, but excluding Federal entities) operating as contractors.

"Contract" means any enforceable agreement, including rental and lease agreements and purchase orders. This definition also includes basic ordering agreements, blanket purchase agreements and other types of agreements under which calls or orders may be issued.

"Designated payment office" means the place named in the contract where invoices will be forwarded for payment, or in certain instances, for approval.

"Due date" means the date on which Federal payment should be made.

"Discount date" means the date by which, if payment is made, a specified discount can be taken.

"Payment date" means the date on which a check for payment is dated or a wire transfer of funds is made.

"Proper invoice" means a bill or written request for payment provided by a business concern for property delivered or services rendered. A proper invoice must contain the data required by the contract.

"Receipt of invoice" means the later of:

—The date a proper invoice is actually received in the designated payment office, or

—The date on which HHS accepts the property or service.

"Receiving report" means written evidence of acceptance of property or services by the designated receiving official. Receiving reports must meet the requirements of 342.7205-3.

"Designated receiving official" means the individual designated:

—Pursuant to 103-27.5018 of the HHS Materiel Management Manual to receive property for his/her activity, or

—In the contract, e.g., the project officer, or by the agency to accept services rendered under a contract.

"Fiscal office" means the office responsible for: (a) Determining whether interest penalties are due a contractor and, if so, the amount, (b) determining whether an invoice offers a financially advantageous discount, (c) maintaining records for and submission of prompt payment reports to the Deputy Assistant Secretary, Finance (DASP), ASMB, OS, and (d) processing payments to the Treasury Department to allow for payment to a contractor when due.

342.7202 Policy and responsibilities.

(a) Each OPDIV and STAFFDIV head and regional director is responsible for ensuring timely payment and the payment of interest penalties when required.

(b) Contracting officers shall include payment provisions in all contracts and purchase orders and, when necessary, participate in the processing of invoices in a timely manner so that payment may be made as close as possible to, but not later than, the due date or, if appropriate, the discount date. Payment will be based on receipt of proper invoices and satisfactory performance of contract terms.

(c) Notice of an apparent error, defect, or impropriety in an invoice shall be given to a business concern within 15 days of receipt of an invoice (3 days for meat or meat food products and 5 days for perishable agricultural commodities). The notice shall be suitably documented.

(d) OPDIV and STAFFDIV heads and regional directors shall ensure that receipt and acceptance are executed as promptly as possible. Receiving reports shall be forwarded in time to be received by the designated payment office by the fifth business day after acceptance, unless other arrangements are made. Designated payment offices shall stamp receiving reports and invoices with the date received in those offices.

(e) Any OPDIV, STAFFDIV or regional office which acquires property or services from a business concern, but which does not make payment for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the business concern as provided in the Payment Due Date clause in the contract.

(f) It is the policy of the Government to defer payment until as close as administratively possible to the due date for payment or, if appropriate, the discount date. In addition, payments shall not be expedited to earn discounts for early payment unless discounts are determined to be economical. These practices will tend to maximize cash balances available to the Treasury, reduce the need for borrowing, and thus contribute to lowering the public debt.

(g) If a business concern offers an activity a discount from the amount otherwise due under a contract for property or services in exchange for payment within a specified period of time, the activity may make payment in an amount equal to the discounted price only if payment is made within the specified period of time. Each activity which violates this provision shall pay an interest penalty on any amount which remains unpaid and on which the agency fails to correct the underpayment within 15 days of the expiration of the discount period (3 days for meat and meat food products, and 5 days for perishable agricultural commodities).

(h) Interest penalties will be paid without the need for business concerns requesting them, except as provided in 342.7205-5. Interest penalty payments will be absorbed within funds available for the administration or operation of the program for which the penalty was incurred.

342.7203 Exemptions.

The provisions of this Subpart 342.72 are not applicable to the following types of contracts:

(a) Contracts when payments are made for financing purposes before receipt of complete delivered items of property or service.

(b) Contracts for utilities (gas, water, electricity, etc.) that include provisions for late payment charges established by tariff or State regulatory commissions.

(c) Informal contracts for the purchase of utilities under a tariff when the tariff provides for late payment charges.

(d) Cost-reimbursement contracts are exempt from the clause required by 342.7204, but must contain the clause required by 342.7205-(1)(d).

342.7204 Contract clause—general.

The contracting officer shall insert the clause at 352.242-72, Interest on Overdue Payments, in solicitations and contracts unless exempted by 342.7203.

342.7205 Payment terms in contracts.

342.7205-1 General requirements.

The contracting officer shall include the Government's terms of payment in each nonexempt contract and purchase order (see 342.7203) in accordance with the guidelines in this section. The clauses established by this section may be modified provided the basic features are included in the payment terms. For example, the contracting officer may modify the clause to provide for special billing instructions or other administrative matters or to allow for a due date for payment beyond 30 days if, in consultation with the designated receiving official, it is determined that the property or services may require additional time for inspection review (see 342.7205-3(c)).

(a) *Payment due dates based on receipt for invoices under purchase orders and fixed-price type contracts.* (1) The contracting officer should insert the clause at 352.242-73, Invoice Payment, in solicitations and contracts when invoices required to be furnished by contractors may be received before the Government has had an opportunity to inspect and accept the supplies or services. It shall be stipulated in the payment terms that payment will be due on the later of receipt of the invoice, or acceptance of the supplies or services.

(2) The contracting officer should insert the clause at 352.242-74, Payment Due Date, in solicitations and contracts when invoices may be required to reflect that delivery (or performance) and acceptance has already occurred. This would be the situation in the case of supplies purchased on an f.o.b. origin basis, with inspection and acceptance at source, and proof of shipment (e.g., a Government bill of lading) required to be furnished with the invoice. This may also be the case with respect to various contracts for services.

(b) *Due dates based on delivery.* (1) The Prompt Payment Act requires payment to be made not later than 7 days after the date of delivery of meat and meat food products, as defined in section 2(a)(3) of the Packers and Stockyards Act of 1921 (7 U.S.C. 182(3)). Contracts for these commodities should require invoices to be furnished with each shipment, and payment terms may stipulate that supplies will not be deemed to be delivered until the later of the date of actual delivery or the date of receipt of a proper invoice. The contracting officer should insert the clause at 352.242-75, Invoice Payment, in solicitations and resultant contracts for the acquisition of meat and meat food products as discussed in this 342.7205-1(b)(1).

(2) The circumstances regarding meats, as described in the preceding paragraph, also apply to perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), except that the required time for payment is 10 calendar days after delivery. This period is subject to changes based on any amendment to the Perishable Agricultural Commodities Act of 1930, or any implementing regulations issued thereunder. Contracts for these commodities should require invoices to be furnished with each shipment, and payment terms may stipulate that supplies will not be deemed to be delivered until the later of the day of actual delivery or the date of receipt of a proper invoice. The contracting officer should insert the clause at 352.242-76, Invoice Payment, in solicitations and resultant contracts for the acquisition of perishable agricultural commodities as discussed in this 342.7205-1(b)(2).

(c) *Recurring payments under leases of real property.* Leases of real property usually provide for payment in arrears of a fixed amount, due on the first day of each month. Payment terms should provide that payment is due on a workday early in the month, but not in excess of the fifth workday.

(d) *Cost-reimbursement type contracts.* The contracting officer should insert the clause set forth at 352.242-77, Invoice Payment, in solicitations for which award of a cost-reimbursement type contract is contemplated and in resultant cost-reimbursement type contracts.

342.7205-2 Invoice requirements.

(a) *Basic requirements of a proper invoice.*

(1) Public Law 97-177 provides, in section 6(3), that "an invoice shall be considered a 'proper invoice' when it contains or is accompanied by such substantiating documentation:

(i) As the Director of the Office of Management and Budget may require by regulation, and (ii) as the Federal agency involved may require by regulation or contract."

(2) OMB Circular A-125 provides that the following data must be included in an invoice for it to constitute a proper invoice:

(i) Name of the business concern and invoice date.

(ii) Contract number, or other authorization for delivery of property or services.

(iii) Description, price, and quantity of property and services actually delivered or rendered.

(iv) Shipping and payment terms.

(v) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

(vi) Other substantiating documentation or information as required by the contract.

(b) *Invoice requirements clause.* The contracting officer should insert the clause set forth at 352.242-78, Invoice Submission, in nonexempt solicitations and contracts (see 342.7203). The clause may be modified to provide for agency needs.

342.7205-3 Receiving reports.

(a) Employees responsible for the inspection and acceptance of property or services are to complete their actions and forward the necessary paperwork to the fiscal office within 5 Government working day of the receipt of the property or rendering of the service, or upon completion of special contract requirements, e.g., installation or testing.

(b) Programmatic review of invoices will be completed by the project officer and forwarded to the contracting officer within five calendar days of their receipt.

(c) The above employees must inform the contracting officer, prior to award, of any extraordinary inspection/review requirements that may not allow for their effort to be completed within the five days period so that these requirements may be included in the contract.

(d) The contracting officer shall ensure that the contract file contains adequate documentation to substantiate the basis for extraordinary inspection/review requirements.

(e) Receiving reports for property must include:

(1) Contract or other authorization number.

(2) Name of contractor.

(3) Product or service description.

(4) Quantities received and accepted, if applicable.

(5) Date(s) property or services were accepted.

(6) Signature, printed name, title, phone number, and mailing address of the designated receiving official.

342.7205-4 Processing invoices.

(a) *Submission of invoices.*

(1) The "Invoice Submission" article of the contract shall instruct the contractor where all invoices will be submitted.

(2) Normally, the invoice will be submitted directly to the fiscal office. Immediately upon receipt, the payment officer shall date stamp and review the invoice to determine whether it is proper. If the invoice contains an apparent error, defect, or impropriety, written notification shall be given to the contractor as early as possible but in no event later than 15 calendar days of the receipt of the invoice (3 days for meat or meat food products and 5 days for perishable agricultural commodities).

(3) If the invoice is considered proper, the payment officer shall place it in a system where periodic follow-up action can be taken and forward a copy to the contracting officer if his/her approval is required before payment can be made so that the contracting officer can return the approved invoice in sufficient time for payment to be made by the payment due date. In the latter case, close coordination is essential between the paying office and the approving official.

(4) Fiscal and contracting officers may agree to allow for invoices requiring contracting officer approval to be submitted by the fiscal office directly to the project officer for review and subsequent submission to the contracting officer for approval. If a receiving report or invoice requiring contracting officer approval is not received in the fiscal office when due, the payment of-

ficer will request immediate submission from the responsible office.

(5) OPDIVs, STAFFDIVs and regional offices may elect to require contractors to submit invoices directly to the contracting officer for processing. However, when this option is used, the OPDIV, STAFFDIV, or regional office shall develop procedures to assure prompt approval and payment of invoices and shall maintain standards against which timely payment of invoices can be evaluated. These procedures and standards shall be developed in conjunction with the fiscal office and a copy shall be submitted through acquisition channels to the Director, Office of Procurement and Logistics Policy (OPLP), OPAL-OS. The Director, OPLP, will submit a copy of the procedures and standards to the Director, Division of Cash Management Policy and Procedures (DCMPP), OS.

(b) *Receipt and processing invoices by the contracting officer.*

(1) Immediately upon receipt, the contracting officer shall date stamp each invoice and review it to determine if the submission is in accordance with the terms of the contract. This date will establish the payment due date or defective invoice notification date when the contracting office is identified as the designated payment office.

(2) When the contract identifies the contracting office as the designated payment (approval) office and a submission is deficient, the contracting officer shall give the contractor written notice of the apparent error, defect, or impropriety within 15 calendar days of the receipt of the invoice (3 days for meat or meat food products and 5 days for perishable agricultural commodities). A copy of the notice will be submitted to the fiscal office. However, payment of an invoice should not be delayed because a minor amount is in question. Generally, a minor amount is considered to be less than 10% of the invoiced amount. The contractor should be informed of the problems in writing and, if appropriate, the amount deleted from the invoice and payment made. The contract file should be documented as to the action taken.

(3) The contracting officer, with assistance from the project officer, must insure that payments are commensurate with technical progress under the contract.

(4) With respect to contracts where the work is budgeted by phase or task, payment to the contractor shall be limited to the amount specified for each phase or task. Approval of invoices is thus controlled by these incremental limitations. Special care should be exercised to assure payments are not made prematurely, e.g., when authorizations to proceed to subsequent tasks are contingent upon approval of the prior task. It is, therefore, mandatory that those contracts susceptible to phasing require billing and financial reporting by tasks or phases.

(5) The Fixed-Fee clause prescribed at FAR 52.216-8 provides that after payment of 85% of the fixed-fee the contracting officer may withhold further payment of fee, within specified limits, only if he/she considers withholding necessary to protect the interests of the Government. Fees shall not be withheld unless the contracting officer makes a determination that such action is in the best interest of the Government and informs the contractor in writing of the reasons for withholding within the time periods set forth in (b)(2) above. A copy of the notification shall be submitted to the fiscal office.

(6) The Allowable Cost and Payment clause prescribed at FAR 52.216-7 requires the contracting officer to make payment in amounts determined to be allowable. The contracting officer shall notify a contractor in writing, within the time periods set forth in (b)(2) above, of any determination to withhold costs. Notification shall be made orally and confirmed in writing if it cannot be made timely. A copy of the notification shall be submitted to the fiscal office. The contracting officer shall follow the procedures in FAR 42.801 if, during the course of contract performance, costs are withheld because they are determined to be unallowable (see FAR 31.001). The notice of intent to disallow costs shall contain the appropriate elements set forth in FAR 42.801(c).

(7) When a contract requires payment to be made within 30 days after receipt of a proper invoice, the contracting officer shall submit the approved invoice to the fiscal office no later than sixteen (16) calendar days from receipt of a proper invoice by the designated payment office. However, when a contract provides for a payment due date other than 30 days after receipt of a proper invoice, and if contracting officer approval of the invoice is required before payment can be made, the contracting officer shall reach agreement with the fiscal office prior to award, as to when the invoice must be received in the designated payment office.

(8) When an invoice offers a financially advantageous discount, the contracting officer shall submit the approved invoice to the fiscal office in sufficient time to insure payment within the discount period. The fiscal office is responsible for determining if a discount is financially advantageous to take in accordance with Federal Cash Management Guidelines.

(c) *Alternative procedures for invoice processing.* In the event an OPDIV, STAFFDIV, or regional office is consistently unable to meet the prior review and approval requirements, it may submit an alternative plan to the Assistant Secretary for Management and Budget for approval that provides for:

(1) Submission of SF-1166, Voucher and Schedule of Payments, to the Treasury Department to allow for payment to be made when due or within the discount period;

(2) Review by the project officer and approval by the contracting officer of the invoice within 15 days after payment;

(3) Any necessary adjustments in the subsequent voucher payments; and

(4) Payment of completion and final vouchers only after approval by the contracting officer.

The plan must explain why the OPDIV, STAFFDIV, or regional office is unable to meet the review and approval period. All approved alternative payment plans will be subject to periodic review and reevaluation.

[49 FR 14024, Apr. 9, 1984, as amended by 50 FR 23135, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

342.7205-5 Interest penalty payments.

(a) An interest penalty will be determined and paid automatically by the fiscal office when all of the following conditions are met:

(1) There is a contract or purchase order with a business concern which contains the Interest on Overdue Payments clause set forth in 352.242-72.

(2) Federal acceptance of property or services has occurred and there is no disagreement over quantity, quality, or other contract provisions.

(3) A proper invoice has been received (except where no invoice is required, e.g., some periodic lease payments) or the activity fails to give notice that the invoice is not proper within 15 days of receipt of an invoice (3 days for meat or meat food products, and 5 days for perishable agricultural commodities).

(4) Payment is made to the business concern more than 15 days after the due date (3 days for meat or meat food products, and 5 days for perishable agricultural commodities).

(b) An interest penalty for contracts containing the Interest on Overdue Payments clause set forth at 352.242-72 will also be paid if an activity takes a discount after the discount period has expired, and fails to correct the underpayment within 15 days of the expiration of the discount period (3 days for meat and meat food products, and 5 days for perishable agricultural commodities).

(c) Interest penalties are not required when payment is delayed because of a disagreement between a Federal agency and a business concern over the amount of the payment or other issues concerning compliance with the terms of a contract; nor are they required when payments are made solely for financing purposes, or for a period when amounts are withheld temporarily in accordance with the contract. Claims concerning disputes, and any interest that may be payable with respect to the period while the dispute is being settled, will be resolved in accordance with the provisions in the Contract Disputes Act of 1978 (41 U.S.C 601 *et seq.*).

342.7206 Method of payment.

342.7206-1 General.

(a) The Department of the Treasury has initiated a program to make contract payments by wire transfer through the Treasury Financial Communications System (TFCS). During its initial phases, payments will be made by both check and wire transfer. The determination of the method of payment will be directed by the Department of Treasury through establishment of a vendor payment amount threshold above which TFCS payments will be required.

(b) Procedures for processing payments through the TFCS may be found in Chapter 2500, Part 4, Volume 1, of the Treasury Fiscal Requirements Manual.

(c) To accommodate payments by either of the payment methods discussed in paragraph (a) of this section, it is necessary that the check payment address and appropriate bank account information be obtained from Government contractors. The contract clause discussed at 342.7206-2 is designed to elicit the necessary information.

342.7206-2 Method of payment.

(a) The contracting officer shall insert the clause set forth at 352.242-79, Method of Payment, in each solicitation and contract to give the Government the option to pay by check or wire transfer and require contractors to furnish the address where check payments should be sent and the appropriate bank account information needed to accomplish wire transfers.

(b) The office making payment shall be identified in the Method of Payment clause as the office designated to receive payment information. Payment information on assigned contracts will be obtained from the assignee by the office making payment if the contractor is unable to obtain it from the assignee.

342.7206-3 Coordination with paying offices.

The office designated to receive payment information shall establish procedures for handling the information and appropriate internal controls to preclude release of the information to unauthorized individuals. If the documented information is not received within five working days after it is due, the payment officer will request the contracting officer to require the contractor to submit the information in sufficient time to avoid a delay in payment.

PART 345—GOVERNMENT PROPERTY

Subpart 345.3—Providing Government Property to Contractors

Sec.

345.370 Providing Government property (in general).

Subpart 345.4—Contractor Use and Rental of Government Property

345.405 Contracts with foreign governments or international organizations.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14030, Apr. 9, 1984, unless otherwise noted.

Subpart 345.3—Providing Government Property to Contractors

345.370 Providing Government property (in general).

(a) A contractor may be provided Government property or allowed to acquire such property at Government expense upon determination that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements, etc.;

(2) The Government receives adequate consideration for providing the property; or

(3) Furnishing Government property is likely to result in substantially lower cost to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the cost to the Government of the contractor's use of privately-owned property.

(b) The determination that it is necessary to provide a contractor or subcontractor with property will be made by the contracting officer with the advice of the agency property official.

(c) If the program office is aware, prior to the submission of the request for contract, that it will be necessary to provide prospective contractors with property, a written justification must accompany the request for contract to the contracting activity.

Subpart 345.4—Contractor Use and Rental of Government Property

345.405 Contracts with foreign governments or international organizations.

Upon the request of a foreign government or international organization, or a contractor certifying that it is acting on behalf of a foreign government or international organization, the contracting officer, with advice from the agency property official cognizant of Government property located in the United States, its possessions, or Puerto Rico, may give written approval for its use without charge on contracts or subcontracts thereunder if:

(a) The foreign government or international organization would be authorized to place the contract with the activity concerned under the Foreign Assistance Act of 1961, as amended, or such use is authorized by an agreement with the foreign government;

(b) The foreign government's placement of the contract directly with the contractor is consistent with the best interests of the United States;

(c) It appears that the foreign government will place the contract with the contractor whether or not use is authorized, and no competitive pricing advantage will accrue to the contractor by virtue of its use;

(d) The contractor agrees that no charge for the use of the property will be included in the price charged the foreign government under the contract; and

(e) The use will not interfere with foreseeable requirements of the United States.

SUBCHAPTER H—CLAUSES AND FORMS

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 352.2—Texts of Provisions and Clauses

Sec.

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352.370 General.

General Provisions for A Cost-Plus-A-Fixed-Fee Contract

General Provisions for A Negotiated Cost-Reimbursement Contract with Nonprofit Institutions Other Than Educational Institutions.

General Provisions for A Negotiated Fixed-Price Research and Development Contract

General Provisions for A Negotiated Fixed-Price Supply Contract

General Provisions for A Negotiated Cost-Reimbursement Contract with Educational Institutions

General Provisions for A Cost-Reimbursement Supply Contract

General Provisions for A Formally Advertised Contract

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14031, Apr. 9, 1984, unless otherwise noted.

Subpart 352.2—Texts of Provisions and Clauses

352.202-1 Definitions.

Insert the following clause in all solicitations and resultant contracts instead of the clause in FAR 52.202-1 except when contemplating (a) a fixed price research and development contract that is expected to be $2,500 or less or (b) a purchase order.

DEFINITIONS (APR 1984)

(a) The term "Secretary" or "Head of the Agency" (also called "Agency Head") means the Secretary, Under Secretary, or any Assistant Secretary, Administrator or Commissioner, of the Department of Health and Human Services; and the term "his/her duly authorized representative" means any person, persons, or board authorized to act for the Secretary.

(b) The term "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(c) The term "Project Officer" means the person representing the Government for the purpose of technical monitoring of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the price of this contract or a change in the delivery dates or performance period of this contract.

(d) The term "Department" means the Department of Health and Human Services.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase order under this contract.

(End of clause)

Alternate I (Apr 1984). For cost-reimbursement contracts other than purchase orders, delete paragraph (c) above and replace with the following paragraph (c):

(c) The term "Project Officer" means the person representing the Government for the purpose of technical monitoring of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the cost of this contract or a change in performance period of this contract. In addition, the Project Officer is not authorized to receive or act upon the Contractor's notification of a revised cost estimate pursuant to the Limitation of Cost or Limitation of Funds clause of this contract.

[49 FR 14031, Apr. 9, 1984, as amended at 53 FR 15564, May 2, 1988]

352.215-12 Restriction of disclosure and use of data.

Insert the following provision in all requests for proposals, and all requests for quotations other than those for information or planning purposes. This provision shall be used in lieu of the provision in FAR 52.215-12.

RESTRICTION ON DISCLOSURE AND USE OF DATA (APR 1984)

The proposal submitted in response to this request may contain data (trade secrets; business data, e.g., commercial information, financial information, and cost and pricing data; and technical data) which the offeror, including its prospective subcontractor(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted; *provided*, that the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following legend, specifying the particular portions of the proposal which are to be restricted in accordance with the conditions of the legend. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act:

Unless disclosure is required by the Freedom of Information Act, 5 U.S.C. 552, as amended, (the Act) as determined by Freedom of Information (FOI) Officials of the Department of Health and Human Services, data contained in the portions of this proposal which have been specifically identified by page number, paragraph, etc. by the offeror as containing restricted information shall not be used or disclosed except for evaluation purposes.The offeror acknowledges that the Department may not be able to withhold a record (data, document, etc.) nor deny access to a record requested pursuant to the Act and that the Department's FOI Officials must make that determination. The offeror hereby agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act.

If a contract is awarded to the offeror as a result of, or in connection with, the submission of this proposal, the Government shall have the right to use or disclose the data to the extent provided in the contract. Proposals not resulting in a contract remain subject to the Act.

The offeror also agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Act.

The data subject to this restriction are contained in pages (insert page numbers, paragraph designations, etc. or other identification).

In addition, the offeror should mark each page of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this page is subject to the restriction on the cover sheet of this proposal or quotation.

Offerors are cautioned that proposals submitted with restrictive legends or statements differing in substance from the above legend may not be considered for award. The Government reserves the right to reject any proposal submitted with a nonconforming legend.

(End of provision)

352.215-71 Employer's identification number.

Insert the following in all solicitations:

EMPLOYER'S IDENTIFICATION NUMBER (APR 1984)

The offeror's Internal Revenue Service "Employer's Identification Number" is ———.

(End of provision)

352.215–72 Pre-proposal conference.

If a pre-proposal conference is to be held as indicated in FAR 15.409, insert the following provision in the affected solicitation:

PRE-PROPOSAL CONFERENCE (APR 1984)

A pre-proposal conference will be held with prospective offerors at (insert local prevailing time) on (insert date) in room (insert room number) at (insert name and location of building).

The pre-proposal conference will be held for the purpose of providing information concerning the Government's requirements which may be helpful in the preparation of proposals and for answering any questions which you have regarding this solicitation.

The success of this type of conference depends largely on the leadtime available to the Government for research in connection with questions submitted by prospective offerors. Therefore, you are requested to mail written questions concerning any areas of uncertainty which, in your opinion, require clarification or correction, in sufficient time to be received on or before (insert date).

Your questions should be submitted to the Contract-Officer, (insert name of Contracting Officer), and the envelope should be marked "Pre-Proposal Conference, RFP No. (insert number of RFP)." A set of questions and answers will be furnished to all prospective offerors whether or not they are in attendance.

Because of space limitations, each prospective offeror will be limited to a total of (insert number) representatives.

Attendance at the pre-proposal conference is recommended; however, attendance is not a prerequisite for proposal submission and will not be considered a factor in proposal evaluation.

(End of provision)

352.216–7 Allowable cost and payment.

Insert this clause in all cost-reimbursement contracts with nonprofit institutions other than educational institutions.

ALLOWABLE COST AND PAYMENT (APR 1984)

(a) *Invoicing.* The Government shall make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with:

(1) 45 CFR Part 74 Appendix E for hospitals; or

(2) Subpart 31.6 of the FAR in effect on the date of this contract for State, local, and federally recognized Indian tribal governments; or

(3) Subpart 31.7 of the FAR in effect on the date of this contract for nonprofit organizations other than those identified in OMB Circular A-122, Attachment C; or

(4) Subpart 31.2 of the FAR in effect on the date of this contract for nonprofit organizations identified in OMB Circular A-122, Attachment C, except that costs of independent research and development and its proportionate share of indirect costs shall not be allowed.

In addition, the following shall apply:

(1) *Bid and proposal costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and agreements, including the development of scientific, cost, and other data needed to support the bids, proposals and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs.

Bid and proposal costs of past accounting periods are unallowable in the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs covered by the following paragraph, or preaward costs covered by Paragraph 33 of Attachment B to OMB Circular A-122.

(2) *Independent research and development costs.*

Independent research and development is research and development conducted by an organization which is not sponsored by Federal or non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(b) *Reimbursing costs.* (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:

(A) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(B) Direct labor;

(C) Direct travel;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

(2) Contractor contributions to any pension, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; *provided*, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though the concern has not yet paid for those items or services.

(d) *Final indirect cost rates.* (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the cognizant Contracting Officer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify: (i) The agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established.

These billing rates:

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* When the Contractor and Contracting Officer agree, the quick-close-out procedures of Subpart 42.7 of the FAR may be used.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be: (1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(h) *Final payment.* (1) The Contractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except:

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parites arising out of the performance of this contract; *provided*, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

[49 FR 14031, Apr. 9, 1984, as amended at 50 FR 38005, Sept. 19, 1985]

352.216-70 Negotiated overhead rates—fixed.

Insert the following clause in all cost-reimbursement contracts with educational institutions and nonprofit organizations when fixed rates subject to carryforward adjustments are used.

NEGOTIATED OVERHEAD RATES—FIXED (APR 1984)

(a) Notwithstanding the provisions of the clause entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated fixed overhead rates for the applicable period(s) to bases agreed upon by the parties, as specified below. A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. When the application of the negotiated fixed rates against the actual bases during a given fiscal period produces an amount greater or less than the indirect costs determined for such period, such greater or lesser amount(s) will be carried forward to a subsequent period.

(b) The Contractor, as soon as possible but no later than six months after the close of its fiscal year, or such other period as may be specified in the contract, shall submit to the Secretary or the duly authorized representative, with a copy to the cognizant audit activity, a proposed fixed overhead rate or rates based on the Contractor's actual cost experience during the fiscal year, including adjustment, if any, for amounts carried forward, together with supporting cost data. Negotiation of fixed overhead rates, including carryforward adjustments, if any, by the Contractor and the Secretary, or the duly authorized representative, shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR) as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify: (1) The agreed fixed overhead rates, (2) the bases to which the rates apply, (3) the fiscal year, unless the parties agreed to a different period, for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of fixed overhead rates for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure of the parties to agree on any fixed overhead rate or rates or to the amount of any carryforward adjustment under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the contract, the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Allowable Cost and Payment" clause set forth in FAR 52.216-7, as in effect on the date of this contract.

(g) Submission of proposed fixed, provisional, and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or the duly authorized representative and agreements on fixed, provisional, and/or final overhead rates entered into between the Contractor and the Secretary or the duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of paragraphs (b), (d), and (e), of this clause.

(End of clause)

352.216-71 Cost principles—hospitals.

Insert the following clause in all cost-reimbursement contracts with profit-making hospitals:

Cost Principles—Hospitals (Apr 1984)

If this contract is with a profit-making hospital, the cost principles referenced in the "Allowable Cost and Payment" clause of this contract are replaced by the cost principles for hospitals set forth in 45 CFR Part 74 Appendix E.

(End of clause)

[49 FR 14031, Apr. 9, 1984, as amended at 50 FR 38005, Sept. 19, 1985]

352.224-70 Confidentiality of information.

The following clause is covered by the policy set forth in Subpart 324.70 and is to be used in accordance with the instructions set forth in 324.7004.

Confidentiality of Information (Apr 1984)

(a) Confidential information, as used in this clause, means (1) information or data of a personal nature about an individual, or (2) proprietary information or data submitted by or pertaining to an institution or organization.

(b) In addition to the types of confidential information described in (a)(1) and (2) above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of preliminary unvalidated findings could create erroneous conclusions which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the "Disputes" clause.

(d) If it is established elsewhere in this contract that information to be utilized under this contract, or a portion thereof, is subject to the Privacy, Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(e) Confidential information, as defined in (a)(1) and (2) above, that is information or data of a personal nature about an individual, or proprietary information or data submitted by or pertaining to an institution or organization, shall not be disclosed without the prior written consent of the individual, institution, or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in (b) above. If the Contracting Officer does not pose any objections in writing within the 45-day period, the Contractor may proceed with disclosure. Disagreements not resolved by the Contractor and the Contracting Officer will be settled pursuant to the "Disputes" clause.

(g) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor should obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(h) Contracting Officer determinations will reflect the results of internal coordination with appropriate program and legal officials.

(i) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

(End of clause)

352.228-70 Required insurance.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

REQUIRED INSURANCE (APR 1984)

(a) The Contractor shall procure and maintain such insurance as is required by law or regulation, including but not limited to the requirements of Subpart 28.3 of the Federal Acquisition Regulation or by the written direction of the Contracting Officer. Prior written approval of the Contracting Officer shall be required with respect to any insurance policy the premiums for which the Contractor proposes to treat as a direct cost under this contract and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the Contracting Officer for approval upon request.

(b) Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government property.

(End of clause)

352.232-9 Withholding of contract payments.

Insert the following clause in all solicitations and contracts other than purchase orders:

WITHHOLDING OF CONTRACT PAYMENTS (APR 1984)

Notwithstanding any other payment provisions of this contract, failure of the Contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, will result in the withholding of payments under this contract unless such failure arises out of causes beyond the control, and without the fault or negligence of the Contractor as defined by the clause entitled "Excusable Delays" or "Default", as applicable. The Government shall promptly notify the Contractor of its intention to withhold payment of any invoice or voucher submitted.

(End of clause)

352.232-71 Cost sharing.

The policy relative to cost sharing is set forth in 335.070.

(a) In contracts for which cost-sharing has been individually negotiated, the clause set forth in FAR 52.232-20 shall be used. Also, an article reading substantially as follows, which includes a cost-sharing formula agreed upon by the contracting officer and the contractor that provides for the ratio of cost-sharing for both the originally established estimated cost and any increase pursuant to the FAR clause, shall be included in the contract.

COST SHARING (APR 1984)

The Contractor agrees to share in the cost of the work hereunder to the extent of not less than (indicate percent of the total cost or dollar amount, etc.) and shall maintain records of all costs so contributed, as well as costs to be paid by the Government. Such records shall be subject to audit. Costs contributed by the Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(End of clause)

(b) In contracts for which cost-sharing will be in accordance with a previously negotiated institutional agreement, the clause set forth in FAR 52.232-20 shall also be used. However, instead of specifying a cost-sharing formula, the following shall be included as a special provision.

COST SHARING UNDER INSTITUTIONAL AGREEMENT (APR 1984)

This contract is subject to an Institutional Cost-Sharing Agreement which became effective with respect to HHS research contracts on (date), and the Contractor agrees that the Government shall not bear the entire cost of the work hereunder.

(End of clause)

352.232-73 Method of payment—letter of credit.

When authorized by an individual or blanket determination, findings, and authorization for advance payment, under a letter of credit, the following clause shall be used: (See 332.406 for further instructions regarding use of the clause.)

METHOD OF PAYMENT—LETTER OF CREDIT (APR 1984)

(a) The Contractor shall be paid with funds made available under the Federal Reserve Letter of Credit No. ——, established by ———— Department of Health and Human Services, against which the Contractor will withdraw funds pursuant to Federal Reserve Letter of Credit procedures contained in Treasury Department Circular 1075 (31 CFR Part 205).

(b) At the request of the Contractor and subject to the following conditions, the Government shall make an advance payment, or advance payments, from time to time, to the Contractor. No advance payment shall be made: (1) Without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (g)(2)) as to the financial necessity therefor (except in the case of educational institutions); (2) in an amount which, together with all advance payments made, exceeds the contract amount, and (3) without a properly certified invoice. The Contractor shall (1) initiate cash drawdowns only when actually needed for its disbursements, (2) report timely the case disbursements and balances as required by the Administering Office, and (3) impose the same standards of timing and amount upon any subcontractors including the furnishing of reports of cash disbursements and balances. Failure to adhere to these material provisions will be considered an event under paragraph (f) of this clause.

(c) The funds drawn by the Contractor against the Federal Reserve Letter of Credit shall be only for current allowable expenditures necessary for the performance of this contract.

(d) When requested in writing by the Contracting Officer, the Contractor shall repay to the Government such part of the unliquidated balance of the advance payments as shall, in the opinion of the Contracting Officer, be in excess of the Contractor's current needs or in excess of the contract price.

(e) If, upon completion or termination of this contract, all amounts obtained by the Contractor under this letter of credit have not been fully liquidated by authorized charges under the contract, the balance thereof shall be deducted from any sums otherwise due to the Contractor from the Government, and any excess funds shall be repaid by the Contractor to the Government upon demand.

(f) Upon the happening of any of the following events of default: (1) A finding by the Administering Office that the Contractor (i) has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provisions of this contract, or (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, or (iv) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (2) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; (3) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings; or (4) the commission of an act of bankruptcy; the Government, without limiting any rights it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals under the Letter of Credit and withhold further payments on this contract. Payment can also be stopped for lack of submission of timely and accurate reports in accordance with contract requirements. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances:

(1) Charge interest on advance payments outstanding during the period of any such default at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 80 Stat. 97 for the Renegotiation Board;

(2) Demand immediate repayment of the unliquidated balance of advance payments hereunder; and/or

(3) Take possession of and, with or without advertisement, sell at public sale at which the Government may be purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract, and after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

(g)(1) No interest shall be charged for advance payments made hereunder, except interest during a period of default as provided in paragraph (f)(2). The Contractor shall charge interest at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 85 Stat. 97 for the Renegotiation Board on subadvances or downpayments to subcontractors and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on subcontracts with educational or research institutions provided such subcontracts are awarded without profit or fee for research, development or experimental work.

(2) The office administering advance payments is designated as ————————.

(End of clause)

352.232-74 Estimated cost and fixed fee—incrementally funded contract.

The following clause, or one reading substantially as it, shall be included in the Special Provisions of an incrementally funded contract:

CONSIDERATION—ESTIMATED COST AND FIXED FEE (APR 1984)

(a) It is estimated that the total cost to the Government for full performance of this contract will be $———, of which the sum of $——— represents the estimated reimbursable costs and $——— represents the fixed-fee.

(b) Total funds currently available for payment and allotted to this contract are $———, of which $——— represents the estimated reimbursable costs and $——— represents the fixed-fee. For further provisions on funding, see the Limitation of Funds clause.

(c) It is estimated that the amount currently allotted will cover performance of Phase I which is scheduled to be completed by (date) ————————.

(d) The Contracting Officer may allot additional funds to the contract without the concurrence of the Contractor.

(End of clause)

352.232-75 Incremental funding.

The following provision shall be included in all requests for proposals whenever the use of incremental funding is contemplated:

INCREMENTAL FUNDING (APR 1984)

(a) Sufficient funds are not presently available to cover the total cost of the complete multiple year project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause entitled Limitation of Funds. Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover the first year of performance. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the contract, to accomplish the entire project. While it is the Government's intention to progressively fund this contract over the entire period of performance up to and including the full estimated cost, the Government will not be obligated to reimburse the Contractor for costs incurred in excess of the periodic allotments, nor will the Contractor be obligated to perform in excess of the amount allotted.

(b) The Limitation of Funds clause to be included in the resultant contract shall supersede the Limitation of Cost clause found in the General Provisions.

(End of provision)

352.233-70 Litigation and claims.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts:

LITIGATION AND CLAIMS (APR 1984)

The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled "Allowable Cost and Payment." Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractors; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

(End of clause)

352.237-70 **Consulting services reporting.**

The contracting officer shall include the following clause in every contract for consulting services, as defined in the General Administration Manual Chapter 8-15 and as required by 337.270.

Consulting Services Reporting (Apr 1984)

The Contractor shall set forth on the cover of every report submitted pursuant to this contract the following information: (a) Name and business address of the Contractor; (b) Contract number; (c) Contract dollar amount; (d) Whether the contract was competitively or noncompetitively awarded; (e) Name of the Department's project officer and complete office identification and address; and (f) Names of the managerial and professional personnel responsible for the content and preparation of the report.

(End of clause)

352.242-71 **Final decisions on audit findings.**

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

Final Decisions on Audit Findings (Apr 1984)

For the purpose of issuing final decisions under the Disputes clause of this contract concerning monetary audit findings, the Contracting Officer shall be that person with ultimate responsibility for making that decision in accordance with Chapter 1-105, Resolution of Audit Findings, of the Department's Grants Administration Manual.

(End of clause)

352.242-72 **Interest on overdue payments.**

As prescribed in 342.7204, insert the following clause in solicitations and contracts unless it is determined the contract will be one or more of the categories specified in 342.7203:

Interest on Overdue Payments (Apr 1984)

(a) The Prompt Payment Act, Public Law 97-177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract and requires the payment to contractors of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

(End of clause)

352.242-73 **Invoice payment.**

As prescribed in 342.7205-1(a)(1), insert the following clause in solicitations and contracts when invoices may be received before the Government has had an opportunity to inspect and accept the supplies or services:

Invoice Payment (Apr 1984)

(a) Payment will be made on this contract as close as possible to but not later than 30 calendar days after an invoice containing the information set forth in the Invoice Submission article of this contract is received in the payment office designated in this contract. An invoice will be deemed to have been received on the later of:

(1) The date the invoice is actually received in the designated payment office, or

(2) The date on which the Government accepts the property or service required under this contract.

(b) Unless a different time period is stated elsewhere in this contract, inspection/acceptance required by this contract will be completed by the Government no later than five Government working days after the goods are delivered or the service is rendered.

(c) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of clause)

352.242-74 **Payment due date.**

As prescribed in 342.7205-1(a)(2), insert the following clause in solicitations and contracts when invoices may be required to reflect that delivery (or performance) and acceptance has already occurred:

PAYMENT DUE DATE (APR 1984)

(a) Payments under this contract will be due on the ——* calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice.

(b) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of clause)

352.242-75 Invoice payment.

As prescribed in 342.7205-1(b)(1), insert the following clause in solicitations and contracts for the acquisition of meat and meat products:

INVOICE PAYMENT (APR 1984)

(a) Payment for the delivery of products required by this contract as defined in Section 2(a)3 of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)) will be made as close as possible to, but not later than, the seventh calendar day after the date of delivery.

(b) A proper invoice covering the supplies delivered is required to be submitted with the shipment. Delivery will be deemed to be made on the later of the actual date of delivery, or the date a proper invoice is received in the office designated to receive the invoice.

(c) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of clause)

352.242-76 Invoice payment.

As prescribed in 342.7205-1(b)(2), insert the following clause in solicitations and resultant contracts for the acquisition of perishable agricultural commodities:

INVOICE PAYMENT (APR 1984)

(a) Payment for the delivery of the commodities required by this contract as defined in Section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a (4)), will be made as close as possible to, but not later than, the tenth calendar day after the date of delivery, unless another date is specified elsewhere in this contract.

(b) A proper invoice covering the supplies delivered is required to be submitted with the shipment. Delivery will be deemed to be made on the later of the actual date of delivery, or the date a proper invoice is received in the office designated to receive the invoice.

(c) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of clause)

352.242-77 Invoice payment.

As prescribed in 342.7205-1(d), insert the following clause in solicitations for which award of a cost-reimbursement type contract is contemplated and in resultant cost-reimbursement type contracts:

INVOICE PAYMENT (APR 1984)

(a) The target date for payment pursuant to the provisions of the allowable cost, fee (if any) and payment clause of this contract shall be 30 calendar days after an invoice containing the information set forth in the Invoice Submission article of this contract is received in the payment office designated in this contract.

(b) Upon receipt of the Contractor's "Completion Invoice" in the payment office designated in the Invoice Submission article of this contract, payment of any remaining cost and fee determined to be allowable pursuant to the allowable cost, fee (if any) and payment clause of this contract shall be due 30 calendar days after the Contracting Officer approves the completion invoice for payment.

(c) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of clause)

352.242-78 Invoice submission.

As prescribed in 342.7205-2(b), insert the following clause in solicitations and contracts to specify documentation required to constitute a proper invoice:

INVOICE SUBMISSION (APR 1984)

(a) The Contractor shall submit an original and ( ) copies of its invoice(s) to (Insert required number of copies of the invoice, name where practicable, title, phone number, and complete mailing address of official in the designated payment office.)

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*Contracting Officer to insert number of days.

(b) The Contractor agrees to include the following information on each invoice:

(1) Contractor's name and invoice date;

(2) Contract number, or other authorization for delivery of property and/or services;

(3) Description, cost or price, and quantity of property and/or services actually delivered or rendered;

(4) Shipping and payment terms;

(5) Other substantiating documentation or information as required by the contract; and

(6) Name where practicable, title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

(End of clause)

352.242-79 Method of payment.

As prescribed in 342.7206-2, insert the following clause in solicitations and contracts to require the contractor to provide necessary payment information:

METHOD OF PAYMENT (APR 1984)

(a) Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) The Contractor shall forward the following information in writing to ———* not later than seven days after receipt of notice of award.

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) to whom check payments are to be sent, and who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers.

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's nine-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide the address and telegraphic abbreviation of the correspondent financial institution, and the correspondent financial institution's nine-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this clause shall be furnished to ———* in writing at least 30 days before the effective date of the change. It is the Contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(End of clause)

352.242-80 HHS Contract financial report.

Financial reports are required on all cost-reimbursement type contracts financed under letter of credit or Departmental Federal Assistance Financing System (DFAFS) methods of payment regardless of dollar value, and all other cost-reimbursement type contracts of $100,000 or more. The reports should be required not less than quarterly. Financial reports can be required on cost-reimbursement contracts under $100,000 when financed by other than the letter of credit or DFAFS methods only if they are considered necessary for effective contract monitoring and administration. When financial and manpower information is to be submitted on Form HHS-646, Financial Report of Individual Project/Contract, the contracting officer shall insert the clause set forth below in the RFP and resultant contract. The contracting officer should insert appropriate wording to specify the reporting period agreed to, and should develop paragraph (d).

CONTRACT FINANCIAL REPORT (APR 1984)

(a) Financial reports on Form HHS-646, Financial Report of Individual Project/Contract, shall be submitted by the Contractor in accordance with the instructions which accompany the form, in an original and two copies, not later than thirty (30) working days after the close of the reporting period. The line entries for subdivisions of work and elements of cost (expenditure categories) to be reported within the total contract shall be stated in paragraph (d) below. Subsequent changes and/or additions in the line entries shall be made in writing.

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*Enter the name and address of the agency office designated to receive the information (see 342.7206-2).

(b) The first financial report shall cover the period consisting of the (*first full calendar month/first full three calendar months*) following the date of the contract, in addition to any fractional part of the initial month.

(c) If the final payment of this contract is to be made on the basis of a desk audit, the Contracting Officer may require the Contractor to submit detailed support for costs contained in one or more interim financial reports.

(d) (To be developed by the Contracting Officer.)

(End of clause)

352.249-14 Excusable delays.

Insert the following clause in all solicitations and resultant contracts other than purchase orders which do not have either a default or excusable delays clause.

EXCUSABLE DELAYS (APR 1984)

(a) Except with respect to failures of subcontractors, the Contractor shall not be considered to have failed in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to have failed in performance of the contract, unless: (1) The supplies or services to be furnished by the subcontractor were obtainable from other sources, (2) The Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (3) The Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he/she shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the termination clause hereof. (As used in this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.)

(End of clause)

352.252-2 Clauses Incorporated by Reference.

Using the format set forth in FAR 52.252-2, insert the applicable HHSAR general provisions found in the matrices in Subpart 352.3 into solicitations and contracts to incorporate the clauses by reference.

352.270-1 Accessibility of meetings, conferences, and seminars to persons with disabilities.

The following clause is to be used in accordance with 370.102:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (APR 1984)

The Contractor agrees as follows:

(a) *Planning.* The Contractor will develop a plan to assure that any meeting, conference, or seminar held pursuant to this contract will meet or exceed the minimum accessibility standards set forth below. This plan shall include a provision for ascertaining the number and types of disabled individuals planning to attend the meeting, conference, or seminar. The plan shall be submitted to the project officer for approval prior to initiating action. (A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars may be submitted in lieu of separate plans.)

(b) *Facilities.* Any facility to be utilized for meetings, conferences, or seminars in performance of this contract shall be accessible to persons with disabilities. The Contractor shall determine, by an on-site inspection if necessary, that the following minimum accessibility requirements are met, or suitable modifications are made to meet these requirements, before the meeting:

(1) *Parking.* (i) Where parking is available on or adjacent to the site, one 12' wide space must be set aside for the care of each mobility impaired attendee. The space need not be permanently striped but may be temporarily marked by signs, ropes, or other means satisfactory to carry out this provision.

(ii) Where parking is not available on or adjacent to the site, valet parking or other alternative means to assist a person who has a mobility impairment may be used. Alternate means must be satisfactory in the judgment of the Government project officer.

(2) *Entrances.* (i) "Entrances" shall include at least one accessible entrance from the street/sidewalk level, and at least one accessible entrance from any available parking facility.

(ii) The entrance shall be level or accessible by ramp with an incline that allows independent negotiation by a person in a wheelchair. In general, the slope of the incline shall be no more than 1" rise per foot of ramp length (1:12).

(iii) Entrance doorways shall be at least 30" in clear width and capable of operation by persons with disabilities. Revolving doors, regardless of foldback capability, will not meet this requirement.

(3) *Meeting Rooms.* (i) Meeting room access from the main entrance area must be level or at an independently negotiable incline (approximately 1:12) and/or served by elevators from the main entrance level. All elevators shall be capable of accommodating a wheelchair 29" wide by 45" long.

(ii) Meeting rooms shall be on one level or, if on different levels, capable of being reached by elevators or by ramps that can be independently negotiated by a person in a wheelchair. Doorways to all meeting rooms shall be at least 30" in clear width.

(iii) The interior of the meeting room shall be on one level or ramped so as to be independently negotiable for a person in a wheelchair.

(iv) Stages, speaker platforms, etc. which are to be used by persons in wheelchairs must be accessible by ramps or lifts. When used, the ramps may not necessarily be independently negotiable if space does not permit. However, any slope over 1:12 must be approved by the project officer. Each case is to be judged on its own merits.

(v) If a meeting room with fixed seating is utilized, seating arrangements for persons in wheelchairs shall be made so that these persons are incorporated into the group rather than isolated on the perimeter of the group.

(4) *Restrooms.* (i) Restrooms shall have level access, signs indicating accessibility, and doorways at least 30" in clear width.

(ii) Sufficient turning space within restrooms shall be provided for independent use by a person in a wheelchair 29" wide by 45" long. A space 60" by 60" or 63" by 56" of unobstructed floor space as measured 12" above the floor is acceptable by standard; other layouts will be accepted if it can be demonstrated that they are usable as indicated.

(iii) There will be a restroom for each sex or a unisex restroom with at least one toilet stall capable of accommodating a wheelchair 29" wide by 45" long (by standard, the minimum is 3'-0" by 4'-8") with outswinging doors or privacy curtains. Wall mounted grab bars are required.

(iv) When separate restrooms have been set up for mobility impaired persons, they shall be located adjacent to the regular restrooms and shall be fully accessible.

(5) *Eating Facilities.* (i) Eating facilities in the meeting facility must be accessible under the same general guidelines as are applied to meeting rooms.

(ii) If the eating facility is a cafeteria, the food service area (cafeteria line) must allow sufficient room for independent wheelchair movement and accessibility to food for persons in wheelchairs, and cafeteria staff shall be available to assist disabled persons.

(6) *Overnight Facilities.* If overnight accommodations are required:

(i) Sufficient accessible guest rooms to accommodate each attendee who is disabled shall be located in the facility where the meeting, conference, or seminar is held, or in a facility housing the attendees which is conveniently located nearby, whichever is satisfactory to the project officer.

(ii) Overnight facilities shall provide for the same minimum accessiblity requirements as the facility utilized for the meeting, conference, or seminar. In addition, guest room access from the main entrance area shall be level, ramped at an independently negotiable incline (1:12), and/or served by elevators capable of accommodating a wheelchair 29" wide by 45" long.

(iii) Doorways to guest rooms, including the doorway to the bathroom, shall be at least 30" in clear width.

(iv) Bathrooms shall have wall mounted grab bars at the tub and water closet.

(v) Guest rooms for persons with a disability shall be provided at the same rate as a guest room for other attendees.

(7) *Water Fountains.* Water fountains shall be accessible to disabled persons, or have cup dispensers for use by persons in wheelchairs.

(c) *Provisions of Services for Sensory Impaired Attendees.* (1) The Contractor, in planning the meeting, conference, or seminar, shall include in all announcements and other materials pertaining to the meeting, conference, or seminar a notice indicating that services will be made available to sensory impaired persons attending the meeting, if requested within five (5) days of the date of the meeting, conference, or seminar. The announcement(s) and other material(s) shall indicate that sensory impaired persons may contact a specific person(s), at a specific address and phone number(s), to make their service requirements known. The phone number(s) shall include a teletype number for the hearing impaired.

(2) The Contractor shall provide, at no cost to the individual, those services required by persons with sensory impairments to insure their complete participation in the meeting, conference, or seminar.

(3) As a minimum, when requested in advance, the Contractor shall provide the following services:

(i) For hearing impaired persons, qualified interpreters. Provisions will also be made for volume controlled phone lines and, if necessary, transportation to local teletype equipment to enable hearing impaired individuals to receive and send meeting related calls. If local teletype equipment is not available, the Contractor shall provide on site teletype equipment. Also, the meeting rooms will be adequately illuminated so signing by interpreters can be easily seen.

(ii) For vision impaired persons, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms will be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usable form for the visually and hearing impaired. Readers, braille translations, and/or tape recordings are all acceptable. These materials shall be available to sensory impaired individuals upon their arrival.

(4) The Contractor is responsible for making every effort to ascertain the number of sensory impaired individuals who plan to attend the meeting, conference, or seminar. However, if it can be determined that there will be no sensory impaired person (deaf and/or blind) in attendance, the provision of those services under paragraph (c) for the nonrepresented group, or groups, is not required.

(End of clause)

352.270-2 Indian preference.

The following clause shall be used as prescribed in 370.202(a):

INDIAN PREFERENCE (APR 1984)

(a) The Contractor agrees to give preference in employment opportunities under this contract to Indians who can perform required work, regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation. To the extent feasible and consistent with the efficient performance of this contract, the Contractor further agrees to give preference in employment and training opportunities under this contract to Indians who are not fully qualified to perform regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts to the extent feasible and consistent with the efficient performance of this contract. The Contractor shall maintain statistical records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its employment and training opportunities after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity."

(d) If no Indian organizations or Indian-owned economic enterprises are available under reasonable terms and conditions, including price, for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or labor surplus area concerns.

(e) As used in this clause:

(1) "Indian" means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual to provide evidence within thirty (30) days from the Tribe concerned that the person is a member of that Tribe.

(2) "Indian Tribe" means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active *operation* and *control* of the enterprise.

(f) The Contractor agrees to include the provisions of this clause, including this paragraph (f), in each subcontract awarded at any tier under this contract.

(g) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270-3 Indian preference program.

The following clause shall be used as prescribed in 370.202(b):

INDIAN PREFERENCE PROGRAM (APR 1984)

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference," the Contractor agrees to establish and conduct an Indian preference program which will expand opportunities for Indians to receive perference for employment and training in connection with the work to be performed under this contract, and which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts. In this connection, the Contractor shall:

(1) Designate a liaison officer who will (i) Maintain liaison with the Government and the Tribe(s) on Indian perference matters; (ii) Supervise compliance with the provisions of this clause; and (iii) Administer the Contractor's Indian perference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not more than twenty (20) calendar days after award of the contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed that sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. The Contractor shall give public notice of existing subcontracting opportunities and, to the extent feasible and consistent with the efficient performance of this contract, shall solicit bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including:

(i) A clear description of the supplies or services required, including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms; (ii) A statement indicating that preference will be given to Indian organizations and Indian-owned economic enterprises in accordance with section 7(b) of Public Law 93-638 (88 Stat. 2205; 25 U.S.C. 450e(b)); (iii) Definitions for the terms "Indian organization" and "Indian-owned economic enterprise" as prescribed under the "Indian Preference" clause of this contract; (iv) A representation to be completed by the bidder or offeror that it is an Indian organization or "Indian-owned economic enterprise; and (v) A closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids or proposals from Indian orgnizations and Indian-owned economic enterprises, no responsive bid or acceptable proposal is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference" clause of this contract. If one or more responsive bids or acceptable proposals are received, award shall be made to the low responsible bidder or acceptable offeror if the price is determined to be reasonable. It the low responsive bid or acceptable proposal is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference" clause of this contract. (5) Maintain written records under this contract which indicate: (i) The numbers of Indians seeking employment for each employment position available under this contract; (ii) the number and types of positions filled by Indians and non-Indians, and the total number of Indians employed under this contract; (iii) For those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (iv) Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract; (v) Reasons why preference was not given to Indian firms as subcontracators or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract; and (vi) The number of Indian organizations and Indian-owned economic enterprises contacted, and the number receiving subcontract awards under this contract.

(6) Submit to the Contracting Officer for approval a quarterly report which summarizes the Contractor's Indian preference program and indicates the number and types of available positions filled by Indians and non-Indians, and the dollar amounts of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises, and to all other firms.

(7) Maintain records pursuant to this clause and keep them available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian Organization," and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

(2) "Indian reservation" includes Indian reservations, public domain Indian Allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.)

(3) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not conflict with any Federal statutory or regulatory requirement dealing with the award and administration of contracts.

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in each subcontract awarded at any tier under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270-4 Pricing of adjustments.

Insert the following clause in all solicitations and resultant fixed-priced contracts other than purchase orders.

PRICING OF ADJUSTMENTS (APR 1984)

When costs are a factor in determination of a contract price adjustment pursuant to the "Changes" clause or any provision of this contract, such costs shall be determined in accordance with the applicable cost principles and procedures set forth below:

Principles	Types of organizations
(a) Subpart 31.2 of the Federal Acquisition Regulation	Commercial
(b) Subpart 31.3 of the Federal Acquisition Regulation	Education
(c) Subpart 31.6 of the Federal Acquisition Regulation	State or local governments
(d) 45 CFR Part 74 Appendix E	Hospitals
(e) Subpart 31.7 of the Federal Acquisition Regulation	Other nonprofit institutions

(End of clause)

[49 FR 14031, Apr. 9, 1984, as amended at 50 FR 38005, Sept. 19, 1985]

352.270-5 Key personnel.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

KEY PERSONNEL (APR 1984)

The personnel specified in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer: *Provided,* that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by the clause. The contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

(End of clause)

352.270-7 Paperwork Reduction Act.

Insert the following clause in all solicitations and contracts.

PAPERWORK REDUCTION ACT (APR 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is outside the scope of their employment, for use by the Federal government or disclosure to third parties, the Paperwork Reduction Act of 1980 (Pub. L. 96-511) shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Assistant Secretary for Management and Budget (ASMB) within the Department of Health and Human Services (HHS) and the Office of Management and Budget (OMB). Contractors and Project Officers should be guided by the provisions of 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the HHS operating division or Office of the Secretary Reports Clearance Officer to determine the procedures for acquiring ASMB and OMB clearance.

(b) The Contractor shall obtain the required ASMB and OMB clearance through the Project Officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and proceed with the collection of information shall be in writing by the Contracting Officer. The Contractor must plan at least 120 days for ASMB and OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

Subpart 352.3—Provision and Clause Matrices

352.370 General.

(a) Contracting officers shall include additional clauses or substitute alternate clauses for those included in the general provisions in accordance with applicable instructions in Subpart 352.2 and FAR Part 52.

(b) Written deviation requests shall be submitted through acquisition channels to the Director, Office of Procurement and Logistics Policy (OPLP); Office of Procurement, Assistance and Logistics (OPAL); Office of the Assistant Secretary for Management and Budget (OASMB-OS). The Director (OPLP) will inform the contracting officer through acquisition channels of the disposition of the request. In the event expeditious action is required, contracting officers are authorized to request oral or written approval directly from the Director (OPLP) who will notify the contracting officer of this disposition of the request.

(c) The general provisions for negotiated cost-reimbursement contracts with non-profit institutions other than educational institutions shall be utilized with the following modifications whenever a contract with a nonprofit institution provides for the payment of a fixed fee:

(1) Add the clause entitled "Facilities Capital Cost of Money" (APR 1984) (See FAR 52.215-30 for the text of the clause).

(2) Add the clause entitled "Fixed Fee" (APR 1984). (See FAR 52.216-8 for the text of the clause.)

(3) Delete "Alternate I" (APR 1984) of clause 36 entitled "Government Property (Cost-Reimbursement, Time and Material, or Labor-Hour Contract)" (APR 1984).

GENERAL PROVISIONS FOR A COST-PLUS-A-FIXED-FEE CONTRACT

REQUIRED

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES

No.	FAR Clause No.	Title and date
1	52.203-1	Officials Not to Benefit (April 1984).
2	52.203-3	Gratuities (April 1984).
3	52.203-5	Covenant Against Contingent Fees (April 1984).
4	52.215-1	Examination of Records by Comptroller General (April 1984).
5	52.215-2	Audit-Negotiation (April 1984).
6	52.215-22	Price Reduction for Defective Cost or Pricing Data (OVER $100,000) (April 1984).
7	52.215-24	Subcontractor Cost of Pricing Data (OVER $100,000) (April 1985).
8	52.215-30	Facilities Capital Cost of Money (April 1984).
9	52.215-31	Waiver of Facilities Capital Cost of Money (April 1984).
10	52.216-7	Allowable Cost and Payment (April 1984).
11	52.216-8	Fixed Fee (April 1984).
12	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
13	52.219-13	Utilization of Women-Owned Small Businesses (April 1984).
14	52.220-3	Utilization of Labor Surplus Area Concerns (April 1984).
15	52.222-3	Convict Labor (April 1984).
16	52.222-20	Walsh-Healy Public Contracts Act (April 1984).
17	52.222-26	Equal Opportunity (April 1984).
18	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
19	52.222-36	Affirmative Action for Handicapped Workers (April 1984).
20	52.223-2	Clean Air and Water (OVER $100,000) (April 1984).
21	52.225-3	Buy American Act—Supplies (April 1984).
22	52.232-9	Limitation on Withholding of Payments (April 1984).
23	52.232-17	Interest (April 1984).
24	52.232-20	Limitation of Cost (April 1984).
25	52.232-23	Assignment of Claims (April 1984).
26	52.233-1	Disputes (April 1984).
27	52.242-1	Notice of Intent to Disallow Costs (April 1984).
28	52.243-2	Changes—Cost-Reimbursement (April 1984)—Alternate V (April 1984).
29	52.244-2	Subcontracts Under Cost-Reimbursement and Letter Contracts (April 1984).
30	52.244-5	Competition in Subcontracting (April 1984).
31	52.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contract) (April 1984).
32	52.246-9	Inspection of Research and Development (Short Form) (April 1984).
33	52.246-23	Limitation of Liability (April 1984).
34	52.249-6	Termination (Cost-Reimbursement) (April 1984).
35	52.249-14	Excusable Delays (April 1984).

II. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES

No.	HHSAR Clause No.	Title and date
1	352.202-1	Definitions (April 1984)—Alternate I (April 1984).
2	352.228-70	Required Insurance (April 1984).
3	352.232-9	Withholding of Contract Payments (April 1984).
4	352.233-70	Litigation and Claims (April 1984).
5	352.242-71	Final Decisions on Audit Findings (April 1984).
6	352.270-5	Key Personnel (April 1984).
7	352.270-7	Paperwork Reduction Act (April 1984)

GENERAL PROVISIONS FOR A NEGOTIATED COST-REIMBURSEMENT CONTRACT WITH NONPROFIT INSTITUTIONS OTHER THAN EDUCATIONAL INSTITUTIONS

REQUIRED

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES

No.	FAR clause No.	Title and date
1	52.203-1	Officials Not to Benefit (April 1984).
2	52.203-3	Gratuities (April 1984).
3	52.203-5	Covenant Against Contingent Fees (April 1984).
4	52.215-1	Examination of Records by Comptroller General (April 1984).
5	52.215-2	Audit-Negotiation (April 1984).
6	52.215-22	Price Reduction for Defective Cost or Pricing Data (OVER $100,000) (April 1984).
7	52.215-24	Subcontractor Cost or Pricing Data (OVER $100,000) (April 1985).
8	52.216-11	Cost Contract—No Fee (April 1984).
9	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
10	52.219-13	Utilization of Women-Owned Small Businesses (April 1984).
11	52.220-3	Utilization of Labor Surplus Area Concerns (April 1984).
12	52.222-3	Convict Labor (April 1984).
13	52.222-20	Walsh-Healy Public Contracts Act (April 1984).
14	52.222-26	Equal Opportunity (April 1984).
15	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
16	52.222-36	Affirmative Action for Handicapped Workers (April 1984).
17	52.223-2	Clean Air and Water (OVER $100,000) (April 1984).
18	52.225-3	Buy American Act—Supplies (April 1984).
19	52.232-9	Limitation on Withholding of Payments (April 1984).
20	52.232-20	Limitation of Costs (April 1984).
21	52.232-23	Assignment of Claims (April 1984).
22	52.233-1	Disputes (April 1984).

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES—Continued

No.	FAR clause No.	Title and date
23	52.242-1	Notice of Intent to Disallow Costs (April 1984)
24	52.243-2	Changes—Cost-Reimbursement (April 1984)—Alternate V (April 1984)
25	52.244-2	Subcontracts Under Cost-Reimbursement and Letter Contracts (April 1984)
26	52.244-5	Competition in Subcontracting (April 1984).
27	52.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contract) (April 1984)—Alternate I (April 1984).
28	52.246-9	Inspection of Research and Development (Short Form) (April 1984).
29	52.246-23	Limitation of Liability (April 1984)
30	52.249-5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (April 1984)

II. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES

No	HHSAR clause No	Title and date
1	352.202-1	Definitions (April 1984)—Alternate I (April 1984).

(The following clause is applicable when fixed rates subject to carryforward are used):

2	352.216-7	Allowable Cost and Payment (April 1984).
3	352.216-70	Negotiated Overhead Rates—Fixed (April 1984).
4	352.228-70	Required Insurance (April 1984).
5	352.232-9	Withholding of Contract Payments (April 1984).
6	352.233-70	Litigation and Claims (April 1984).
7	352.242-71	Final Decisions on Audit Findings (April 1984).
8	352.249-14	Excusable Delays (April 1984)
9	352.270-5	Key Personnel (April 1984).
10	352.270-7	Paperwork Reduction Act (April 1984)

GENERAL PROVISIONS FOR A NEGOTIATED FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACT

REQUIRED

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES

No.	FAR Clause No.	Title and date
1	52.203-1	Officials Not to Benefit (April 1984)
2	52.203-3	Gratuities (April 1984)
3	52.203-5	Covenant Against Contingent Fees (April 1984).

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES—Continued

No	FAR Clause No	Title and date
4	52.215-1	Examination of Records by Comptroller General (April 1984).
5	52.215-2	Audit-Negotiation (April 1984).
6	52.215-22	Price Reduction for Defective Cost or Pricing Data (OVER $100,000) (April 1984).
7	52.215-24	Subcontractor Cost or Pricing Data (OVER $100,000) (April 1985).
8	52.215-30	Facilities Capital Cost of Money (April 1984).
9	52.215-31	Waiver of Facilities Capital Cost of Money (April 1984).
10	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
11	52.219-13	Utilization of Women-Owned Small Businesses (April 1984)
12	52.220-3	Utilization of Labor Surplus Area Concerns (April 1984).
13	52.222-3	Convict Labor (April 1984).
14	52.222-20	Walsh-Healy Public Contracts Act (April 1984).
15	52.222-26	Equal Opportunity (April 1984)
16	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
17	52.222-36	Affirmative Action for Handicapped Workers (April 1984)
18	52.223-2	Clean Air and Water (OVER $100,000) (April 1984).
19	52.225-3	Buy American Act—Supplies (April 1984).
20	52.229-3	Federal, State, and Local Taxes (April 1984).
21	52.232-2	Payments Under Fixed-Price Research and Development Contracts (April 1984).
22	52.232-9	Limitation on Withholding of Payments (April 1984).
23	52.232-17	Interest (April 1984).
24	52.232-23	Assignment of Claims (April 1984)
25	52.233-1	Disputes (April 1984)
26	52.243-1	Changes—Fixed Price (April 1984)—Alternate V (April 1984).
27	52.244-1	Subcontracts Under Fixed-Price Contracts (OVER $500,000) (April 1984)
28	52.244-5	Competition in Subcontracting (April 1984)

(If the contract prices are not based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the following clause is applicable):

29	52.245-2	Government Property (Fixed-Price Contracts) (April 1984)—Alternate I (April 1984)

or

(If this contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research, the following clause is applicable):

29	52.245-2	Government Property (Fixed-Price Contracts) (April 1984)—Alternate II (April 1984).
30	52.246-7	Inspection of Research and Development—Fixed Price (April 1984).
31	52.246-16	Responsibility for Supplies (April 1984)

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES—Continued

(If the contract is awarded to other than an educational or nonprofit institution on a no-profit basis, the following clause is applicable):

No.	FAR Clause No.	Title and date
32	52.249-2	Termination for Convenience of the Government (Fixed-Price) (April 1984).

or

(If the contract is awarded to an educational or nonprofit institution on a no-profit basis, the following clause is applicable):

No.	FAR Clause No.	Title and date
32	52.249-5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (April 1984).

(This clause is not applicable if the contract is awarded on a no-fee basis to an educational or nonprofit institution)

No.	FAR Clause No.	Title and date
33	52.249-9	Default (Fixed-Price Research and Development) (April 1984).

(If the contract is awarded on a fee basis, the following clause is applicable):

No.	FAR Clause No.	Title and date
34	52.249-14	Excusable Delays (April 1984).

II. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES

No.	HHSAR Clause No.	Title and date
1	352.202-1	Definitions (April 1984).
2	352.232-9	Withholding of Contract Payments (April 1984).

(If the contract is awarded on the basis of no-profit to an educational or nonprofit institution, the following clause is applicable):

No.	HHSAR Clause No.	Title and date
3	352.249-14	Excusable Delays (April 1984).
4	352.270-4	Pricing of Adjustments (April 1984).
5	352.270-7	Paperwork Reduction Act (April 1984)

GENERAL PROVISIONS FOR A NEGOTIATED FIXED-PRICE SUPPLY CONTRACT

REQUIRED

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES

No.	FAR Clause No.	Title and date
1	52.203-1	Officials Not to Benefit (April 1984).
2	52.203-3	Gratuities (April 1984).
3	52.203-5	Covenant Against Contigent Fees (April 1984).
4	52.212-15	Government Delay of Work (April 1984).
5	52.215-1	Examination of Records by Comptroller General (April 1984).
6	52.215-2	Audit-Negotiation (April 1984).
7	52.215-22	Price Reduction for Defective Cost or Pricing Data (OVER $100,000) (April 1984).
8	52.215-24	Subcontractor Cost or Pricing Data (OVER $100,000) (April 1985).
9	52.215-30	Facilities Capital Cost of Money (April 1984).
10	52.215-31	Waiver of Facilities Capital Cost of Money (April 1984).
11	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
12	52.219-13	Utilization of Women-Owned Small Businesses (April 1984).
13	52.220-3	Utilization of Labor Surplus Area Concerns (April 1984).
14	52.222-3	Convict Labor (April 1984).
15	52.222-20	Walsh-Healy Public Contracts Act (April 1984).
16	52.222-26	Equal Opportunity (April 1984).
17	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
18	52.222-36	Affirmative Action for Handicapped Workers (April 1984).
19	52.223-2	Clean Air and Water (OVER $100,000) (April 1984).
20	52.225-3	Buy American Act—Supplies (April 1984).
21	52.229-3	Federal, State, and Local Taxes (April 1984).
22	52.232-1	Payments (April 1984).
23	52.232-8	Discounts for Prompt Payments (April 1984).
24	52.232-9	Limitation on Withholding of Payments (April 1984).
25	52.232-11	Extras (April 1984).
26	52.232-17	Interest (April 1984).
27	52.232-23	Assignment of Claims (April 1984).
28	52.233-1	Disputes (April 1984).
29	52.243-1	Changes—Fixed Price (April 1984).
30	52.244-1	Subcontracts Under Fixed-Price Contracts (OVER $500,000) (April 1984).
31	52.244-5	Competition in Subcontracting (April 1984).
32	52.245-2	Government Property (Fixed-Price Contracts (April 1984).

or

(If the contract prices are not based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the following clause is applicable):

No.	FAR Clause No.	Title and date
32	52.245-2	Government Property (Fixed-Price Contracts) (April 1984)—Alternate I (April 1984).
33	52.246-2	Inspection of Supplies-Fixed Price (April 1984).
34	52.246-16	Responsibility for Supplies (April 1984).
35	52.249-2	Termination for Convenience of the Government (Fixed-Price) (April 1984).
36	52.249-8	Default (Fixed-Price Supply and Service) (April 1984).

II. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES

No.	HHSAR Clause No.	Title and date
1	352.202-1	Definitions (April 1984).
2	352.232-9	Withholding of Contract Payments (April 1984).
3	352.270-4	Pricing of Adjustments (April 1984)
4	352.270-7	Paperwork Reduction Act (April 1984).

GENERAL PROVISIONS FOR A NEGOTIATED COST-REIMBURSEMENT CONTRACT WITH EDUCATIONAL INSTITUTIONS

REQUIRED

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES

No	FAR Clause No.	Title and date
1	52.203-1	Officials Not to Benefit (April 1984)
2	52.203-3	Gratuities (April 1984)
3	52.203-5	Covenant Against Contingent Fees (April 1984).
4	52.215-1	Examination of Records by Comptroller General (April 1984).
5	52.215-2	Audit-Negotiation (April 1984).
6	52.215-22	Price Reduction for Defective Cost or Pricing Data (OVER $100,000) (April 1984)
7	52.215-24	Subcontractor Cost or Pricing Data (OVER $100,000) (April 1985)
8	52.216-7	Allowable Cost and Payment (April 1984)
9	52.216-11	Cost Contract—No Fee (April 1984)

(The following clause is applicable when predetermined rates are used).

No	FAR Clause No.	Title and date
10	52.216-15	Predetermined Indirect Cost Rates (April 1984).
11	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
12	52.219-13	Utilization of Women-Owned Small Businesses (April 1984)
13	52.220-3	Utilization of Labor Surplus Area Concerns (April 1984).
14	52.222-3	Convict Labor (April 1984).
15	52.222-20	Walsh-Healy Public Contracts Act (April 1984).
16	52.222-26	Equal Opportunity (April 1984).
17	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984)
18	52.222-36	Affirmative Action for Handicapped Workers (April 1984).
19	52.223-2	Clean Air and Water (OVER $100,000) (April 1984).
20	52.225-3	Buy American Act—Supplies (April 1984).
21	52.232-9	Limitation on Withholding of Payments (April 1984).
22	52.232-20	Limitation of Cost (April 1984).
23	52.232-23	Assignment of Claims (April 1984).
24	52.233-1	Disputes (April 1984).
25	52.242-1	Notice of Intent to Disallow Costs (April 1984).
26	52.243-2	Changes—Cost-Reimbursement (April 1984)—Alternate V (April 1984).
27	52.244-2	Subcontracts Under Cost-Reimbursement and Letter Contracts (April 1984).
28	52.244-5	Competition in Subcontracting (April 1984).
29	52.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contract) (April 1984)—Alternate I (April 1984).
30	52.246-9	Inspection of Research and Development (Short Form) (April 1984).
31	52.246-23	Limitation of Liability (April 1984).
32	52.249-5	Termination for Convenience of the Government (Educational and other Nonprofit Institutions) (April 1984).

II. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES

No	HHSAR Clause No	Title and date
1	352.202-1	Definitions (April 1984)—Alternate I (April 1984).

(The following clause is applicable when fixed rates subject to carryforward are used).

No	HHSAR Clause No	Title and date
2	352.216-70	Negotiated Overhead Rates—Fixed (April 1984).
3	352.228-70	Required Insurance (April 1984).
4	352.232-9	Withholding of Contract Payments (April 1984).
5	352.233-70	Litigation and Claims (April 1984).
6	352.242-71	Final Decisions on Audit Findings (April 1984).
7	352.249-14	Excusable Delays (April 1984).
8	352.270-5	Key Personnel (April 1984).
9	352.270-7	Paperwork Reduction Act (April 1984).

GENERAL PROVISIONS FOR A COST-REIMBURSEMENT SUPPLY CONTRACT

REQUIRED

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES

No	FAR Clause No	Title and date
1	52.203-1	Officials Not to Benefit (April 1984).
2	52.203-3	Gratuities (April 1984).
3	52.203-5	Covenant Against Contingent Fees (April 1984).

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES—Continued

No	FAR Clause No.	Title and date
4	52.215-1	Examination of Records by Comptroller General (April 1984).
5	52.215-2	Audit-Negotiation (April 1984).
6	52.215-22	Price Reduction for Defective Cost or Pricing Data (OVER $100,000) (April 1984).
7	52.215-24	Subcontractor Cost or Pricing Data (OVER $100,000) (April 1985).
8	52.215-30	Facilities Capital Cost of Money (April 1984).
9	52.215-31	Waiver of Facilities Capital Cost of Money (April 1984).
10	52.216-7	Allowable Cost and Payment (April 1984).
11	52.216-8	Fixed Fee (April 1984).
12	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
13	52.219-13	Utilization of Women-Owned Small Businesses (April 1984).
14	52.220-3	Utilization of Labor Surplus Area Concerns (April 1984).
15	52.222-3	Convict Labor (April 1984).
16	52.222-20	Walsh-Healy Public Contracts Act (April 1984).
17	52.222-26	Equal Opportunity (April 1984).
18	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
19	52.222-36	Affirmative Action for Handicapped Workers (April 1984).
20	52.223-2	Clean Air and Water (OVER $100,000) (April 1984).
21	52.225-3	Buy American Act—Supplies (April 1984).
22	52.232-9	Limitation on Withholding of Payments (April 1984).
23	52.232-17	Interest (April 1984).
24	52.232-20	Limitation of Cost (April 1984).
25	52.232-23	Assignment of Claims (April 1984).
26	52.233-1	Disputes (April 1984).
27	52.242-1	Nature of Intent to Disallow Costs (April 1984).
28	52.243-2	Changes—Cost-Reimbursement (April 1984).
29	52.244-2	Subcontracts Under Cost-Reimbursement and Letter Contracts (April 1984).
30	52.244-5	Competition in Subcontracting (April 1984).
31	52.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contract) (April 1984).
32	52.246-3	Inspection of Supplies—Cost-Reimbursement (April 1984).
33	52.246-23	Limitation of Liability (April 1984).
34	52.249-6	Termination (Cost-Reimbursement) (April 1984).
35	52.249-14	Excusable Delays (April 1984).

II. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES

No.	HHSAR Clause No.	Title and date
1	352.202-1	Definitions (April 1984)—Alternate I (April 1984).
2	352.228-70	Required Insurance (April 1984).
3	352.232-9	Withholding of Contract Payments (April 1984).
4	352.233-70	Litigation and Claims (April 1984).
5	352.242-71	Final Decisions on Audit Findings (April 1984).
6	352.270-5	Key Personnel (April 1984).
7	352.270-7	Paperwork Reduction Act (April 1984).

GENERAL PROVISIONS FOR A SEALED BID CONTRACT

REQUIRED

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1)

No.	FAR Clause No.	Title and date
1	52.203-1	Officials Not to Benefit (April 1984).
2	52.203-3	Gratuities (April 1984).
3	52.203-5	Covenant Against Contingent Fees (April 1984).
4	52.212-15	Government Delay of Work (April 1984).
5	52.214-26	Audit—Sealed Bidding (OVER $100,000) (April 1985).
6	52.214-27	Price Reduction for Defective Cost of Pricing Data—Modifications—Sealed Bidding (OVER $100,000) (April 1985).
7	52.214-28	Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (OVER $100,000) (April 1985).
8	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (April 1984).
9	52.219-13	Utilization of Women-Owned Small Businesses (April 1984).
10	52.220-3	Utilization of Labor Surplus Area Concerns (April 1984).
11	52.222-3	Convict Labor (April 1984).
12	52.222-20	Walsh-Healy Public Contracts Act (April 1984).
13	52.222-26	Equal Opportunity (April 1984).
14	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984).
15	52.222-36	Affirmative Action for Handicapped Workers (April 1984).
16	52.223-2	Clean Air and Water (OVER $100,000) (April 1984).
17	52.225-3	Buy American Act—Supplies (April 1984).
18	52.229-3	Federal, State, and Local Taxes (April 1984).
19	52.232-1	Payments (April 1984).
20	52.232-8	Discounts for Prompt Payments (April 1984).
21	52.232-9	Limitation on Withholding of Payments (April 1984).
22	52.232-11	Extras (April 1984).

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1)—Continued

No.	FAR Clause No.	Title and date
23	52.232-17	Interest (April 1984)
24	52.232-23	Assignment of Claims (April 1984)
25	52.233-1	Disputes (April 1984)
26	52.243-1	Changes—Fixed-Price (April 1984)
27	52.244-1	Subcontracts Under Fixed-Price Contracts (OVER $500,000) (April 1984)
28	52.245-2	Government Property (Fixed-Price Contracts) (April 1984)
29	52.246-2	Inspection of Supplies—Fixed-Price (April 1984)
30	52.246-16	Responsibility for Supplies (April 1984)
31	52.249-2	Termination for Convenience of the Government (Fixed-Price) (April 1984)
32	52.249-8	Default (Fixed-Price Supply and Service) (April 1984)

II. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CFR CHAPTER 3) CLAUSES

No.	HHSAR Clause No.	Title and date
1	352.202-1	Definitions (April 1984)
2	352.232-9	Withholding of Contract Payments (April 1984)
3	352.270-7	Paperwork Reduction Act (April 1984)

[49 FR 14031, Apr. 9, 1984, as amended at 50 FR 23135, May 31, 1985; 50 FR 38004, Sept. 19, 1985; 53 FR 15564, May 2, 1988]

PART 353—FORMS

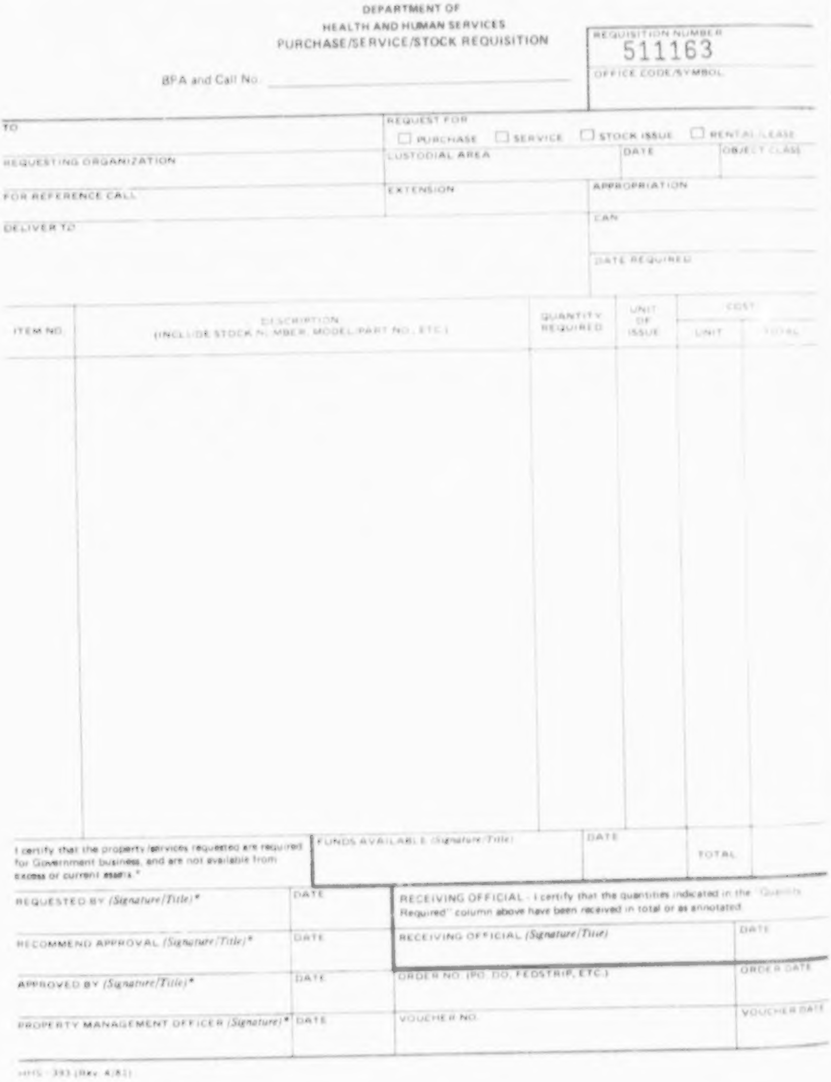
Subpart 353.3—Illustrations of Forms

Sec.
353.370-393 Form HHS 393, Purchase/Service/Stock Requisition.
353.370-674 Form HHS 674, Structured Approach Profit/Fee Objective.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 353.3—Illustrations of Forms

353.370–393 Form HHS 393, Purchase/Service/Stock Requisition.



DEPARTMENT OF
HEALTH AND HUMAN SERVICES
PURCHASE/SERVICE/STOCK REQUISITION

BPA and Call No. ____________________

REQUISITION NUMBER 511163

OFFICE CODE/SYMBOL

TO	REQUEST FOR ☐ PURCHASE ☐ SERVICE ☐ STOCK ISSUE ☐ RENTAL/LEASE		
REQUESTING ORGANIZATION	CUSTODIAL AREA	DATE	OBJECT CLASS
FOR REFERENCE CALL	EXTENSION	APPROPRIATION	
DELIVER TO		CAN	
		DATE REQUIRED	

ITEM NO.	DESCRIPTION (INCLUDE STOCK NUMBER, MODEL/PART NO., ETC.)	QUANTITY REQUIRED	UNIT OF ISSUE	COST	
				UNIT	TOTAL

I certify that the property/services requested are required for Government business, and are not available from excess or current assets.*	FUNDS AVAILABLE (Signature/Title)	DATE	TOTAL	
REQUESTED BY (Signature/Title)*	DATE	RECEIVING OFFICIAL - I certify that the quantities indicated in the "Quantity Required" column above have been received in total or as annotated.		
RECOMMEND APPROVAL (Signature/Title)*	DATE	RECEIVING OFFICIAL (Signature/Title)	DATE	
APPROVED BY (Signature/Title)*	DATE	ORDER NO. (PO, DO, FEDSTRIP, ETC.)	ORDER DATE	
PROPERTY MANAGEMENT OFFICER (Signature)*	DATE	VOUCHER NO.	VOUCHER DATE	

HHS - 393 (Rev. 4/81)

[51 FR 44295, Dec. 9, 1986]

353.370-674 **Form HHS 674, Structured Approach Profit/Fee Objective.**

Structured Approach Profit/Fee Objective

CONTRACTOR			RFP/CONTRACT NO.	
BUSINESS UNIT			CONTRACT TYPE	
ADDRESS				
CONTRACTOR EFFORT				
1 COST CATEGORY	GOVERNMENT'S COST OBJECTIVE (a)	WEIGHT RANGE (b)	ASSIGNED WEIGHT (c)	WEIGHTED PROFIT/FEE ((a) x (c)) (d)
MATERIAL ACQUISITION				
		1% to 5%		
DIRECT LABOR				
		4% to 15%		
OVERHEAD				
		4% to 9%		
OTHER COSTS				
		1% to 5%		
GENERAL MANAGEMENT (G & A)		4% to 8%		
1 A TOTAL				
2 OTHER FACTORS				
FACTOR	MEASUREMENT BASE (a)	WEIGHT RANGE (b)	ASSIGNED WEIGHT (c)	WEIGHTED PROFIT/FEE 1 A (a) x (c) (d)
COST RISK	TOTAL COST OBJECTIVE 1 A (a)	0% TO 7%		
INVESTMENT		-2% TO +2%		
PERFORMANCE		-1% TO +1%		
SOCIO ECONOMIC PROGRAMS		-.5% TO +.5%		
SPECIAL SITUATIONS				
2 A TOTAL OTHER FACTORS				
3 SUBTOTAL PROFIT/FEE LINES (1 A) + (2 A)				
4 *LESS FACILITIES CAPITAL COST OF MONEY*				
5 TOTAL PROFIT/FEE OBJECTIVE LINE (3) – (4)				

FORM HHS-674 (12/81)

[49 FR 14047, Apr. 9, 1984]

SUBCHAPTER T—HHS SUPPLEMENTATIONS

PART 370—SPECIAL PROGRAMS AFFECTING ACQUISITION

Subpart 370.1—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

Sec.
370.101 Policy.
370.102 Responsibilities.

Subpart 370.2—Indian Preference in Employment, Training, and Subcontracting Opportunities

370.201 Statutory requirements.
370.202 Applicability.
370.203 Definitions.
370.204 Compliance enforcement.
370.205 Tribal preference requirements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 14048, Apr. 9, 1984, unless otherwise noted.

Subpart 370.1—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

370.101 Policy.

(a) It is the policy of HHS that all meetings, conferences, and seminars be accessible to individuals with disabilities. For the purposes of this policy, accessibility is defined as both physical access to meeting, conference, and seminar sites, and aids and services to enable individuals with sensory disabilities to fully participate in meetings, conferences, and seminars.

(b) In regard to acquisition, the policy is applicable to all contracts where the statement of work requires the contractor to conduct meetings, conferences, or seminars that are open to the public or involve HHS personnel, but not to ad hoc meetings that may be necessary or incidental to contract performance.

370.102 Responsibilities.

(a) The contracting officer shall include the clause in 352.270-1 in every solicitation and resulting contract when the statement of work requires the contractor to conduct meetings, conferences, or seminars in accordance with 370.101(b).

(b) The project officer shall be responsible for obtaining, reviewing, and approving the contractor's plan, which is to be submitted in response to paragraph (a) of the contract clause in 352.270-1. A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars will be acceptable. The project officer, prior to approving the plan, shall consult with the Office of Engineering Services serving the region where the meeting, conference, or seminar is to be held, to assure that the contractor's plan meets the accessibility requirements of the contract clause. The Office of Engineering Services shall make a determination on the adequacy of the contractor's plan, and notify the project officer, in writing, within ten (10) working days of receiving the request from the project officer.

[49 FR 14048, Apr. 9, 1984, as amended at 50 FR 23135, May 31, 1985; 50 FR 38004, Sept. 19, 1985]

Subpart 370.2—Indian Preference in Employment, Training, and Subcontracting Opportunities

370.201 Statutory requirements.

Section 7(b) of the Indian Self-Determination and Education Assistance Act, Public Law 93-638, 88 Stat. 2205; 25 U.S.C. 450e(b) requires:

> Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—
>
> (1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and
>
> (2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

370.202 Applicability.

The Indian Preference clause set forth in 352.270-2 and the Indian Preference Program clause set forth in 352.270-3 have been developed to implement section 7(b) of Public Law 93-638 for all activities of the Department. The clauses shall be used by any affected departmental contracting activity as follows, except solicitations issued and contracts awarded pursuant to Title I of Public Law 93-638 (25 U.S.C. 450 et seq.) are exempted:

(a) The Indian Preference clause (352.270-2) shall be included in each solicitation and resultant contract, regardless of dollar amount:

(1) When the contract is to be awarded pursuant to an act specifically authorizing contracts with Indian organizations; or

(2) Where the work to be performed under the contract is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The Indian Preference Program clause (352.270-3) shall be included in each solicitation and resultant contract when:

(1) The dollar amount of the acquisition is expected to equal or exceed $50,000 for nonconstruction work or $100,000 for construction work;

(2) The Indian Preference clause is to be included in the solicitation and resultant contract; and

(3) The determination is made, prior to solicitation that the work to be performed under the resultant contract will take place in whole or in substantial part on or near an Indian reservation(s). In addition, the Indian Preference Program clause may be included in any solicitation and resultant contract below the $50,000 or $100,000 level for nonconstruction or construction contracts, respectively but which meet the requirements of paragraphs (b) (2) and (3) of this section, and, in the opinion of the contracting activity, offer substantial opportunities for Indian employment, training, and subcontracting.

370.203 Definitions.

For purposes of this Subpart 370.2, the following definitions shall apply:

(a) "Indian" means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual to provide evidence within thirty (30) days from the Tribe concerned that the person is a member of that Tribe.

(b) "Indian Tribe" means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(c) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451).

(d) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active *operation* and *control*.

(e) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(f) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

370.204 Compliance enforcement.

(a) The concerned contracting activity shall be responsible for conducting periodic reviews to insure contractor compliance with the requirements of the clauses set forth in 352.270-2 and 352.270-3. These reviews may be conducted with the assistance of the Indian Tribe(s) concerned.

(b) Compiaints of noncompliance with the requirements of the clauses set forth in 352.270-2 and 352.270-3 which are filed in writing with the contracting activity shall be promptly investigated and resolved by the contracting officer.

370.205 Tribal preference requirements.

(a) Where the work under a contract is to be performed on an Indian reservation, the contracting activity may supplement the clause set forth in 352.270-3 by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The supplemental requirements shall be jointly developed for the contract by the contracting activity and the Tribe. Supplemental preference requirements must represent a further implementation of the requirements of section 7(b) of Public Law 93-638 and must be approved by the affected program director and approved for legal sufficiency by the Business and Administrative Law Division, OGC, or a regional attorney before being added to a solicitation and resultant contract. Any supplemental preference requirements to be added to the clause in 352.270-3 shall be included in the solicitation and clearly identified in order to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

(b) Nothing in these regulations shall be interpreted to preclude Tribes from independently developing and enforcing their own tribal preference requirements. Such independently developed tribal preference requirements shall not, except as provided in paragraph (a) above, become a requirement in contracts covered under this Subpart 370.2, and must not conflict with any Federal statutory or regulatory requirement concerning the award and administration of contracts.

ATTACHMENT I TO CHAPTER 3--SINGLE LETTER OF CREDIT RECIPIENTS AND CENTRAL POINT ADDRESSES

State	Organization and payee No.	Recipient CRS-EIN [1]	Letter of credit
Alabama	University of Alabama Medical Center, 1-636005396-A4 Director, Office of Grants and Contracts Accounting, University of Alabama, University Station, Birmingham, Alabama 35296	1-636001138-A2, 1-636001138-A3, 1-636001138-A4, 1-636001138-A5. 1-636001138-B1, 1-636005396-A3 1-636005396-A4 1-636005396-A5, 1-636005396-A6, 1-636005396-A7, 1-636005396-A8	750080110
	University of Alabama, 1-636001138-A1 Comproller, University of Alabama, P.O. Box M, University, Alabama	1-636001138-A1, 1-636001138-A6 1-636001138-A7, 1-636001138-A8, 1-636001138-A9, 1-636001138-B2, 1-636001138-B3, 1-636001138-B4	75080115
	Southern Research, Institute, 1-630288868-A2 Financial Officer, Southern Research Institute, 2000 9th Avenue, South, Birmingham, Alabama 35205	1-630288868-A1 1-630288868-A2	75083532
Alaska	State of Alaska, 1-900001517-A1 Director, Division of Finance, Department of Administration, Pouch C, Juneau, Alaska 99801	1-000700389-A1, 1-926001185-A2, 1-926001185-A3 1-926001185-A4, 1-926001185-A5, 1-926001185-A7, 1-926001185-B1, 1-926001185-B2, 1-926001185-B3, 1-926001185-B6, 1-926001185-B7, 1-926001185-B8, 1-926001185-B9, 1-926001185-C1, 1-926001185-C2	75080021
Arizona	State of Arizona, 1-866004791-B7 State Treasurer's Office, State Capitol, Phoenix, Arizona 85007	1-866004791-A1, 1-866004/91-A2, 1-866004791-A3. 1-866004791-A4, 1-866004791-A5, 1-866004791-A6, 1-866004791-A7, 1-866004791-A8, 1-866004791-A9, 1-866004791-B2, 1-866004791-B3, 1-866004791-B7, 1-866004791-B8, 1-866004791-C2, 1-866004791-C5, 1-866004791-C7, 1-866004791-C8, 1-866004791-C9, 1-866004791-D1, 1-866004791-D2, 1-866004791-D3, 1-866004791-D5, 1-866004791-D6, 1-866004791-D7, 1-866004791-D8, 1-866004791-D9, 1-866004791-E3, 1-866004791-E5, 1-866004791-E6, 1-866004791-E7, 1-866004791-E8, 1-866004791-E9	75080628
California	County of San Diego, 1-95000934-A2 Auditor and Controller, County of San Diego, County Administration Center, 1600 Pacific Highway, San Diego, California 92101	1-956000924-A1 1-956000924-A2	75080386
	University of California, 1-900001727-A1 Letter of Credit, Universities of California, Berkeley, California 94720		75081471
	Santa Barbara	1-956006145-A1 1-956006145-A2	75081471
	San Diego	1-956006144-A1, 1-956006144-A2, 1-956006144-A3	75081471
	Davis	1-946036494-A1	75081471
	Los Angeles	1-956006143-A1, 1-956006143-A2, 1-956006143-A3, 1-956006143-A4, 1-956006143-A6	75081471
	Irvine	1-952226406-A1, 1-952226406-A2	75081471
	Berkeley	1-946002133-A1, 1-946002133-A2	75081471
	Riverside	1-237361894-A1, 1-956006142-A1	75081471
	Santa Cruz	1-941539563-A1	75081471
	San Francisco	1-946036493-A1, 1-946036493-A6, 1-946036493-A7, 1-946036493-A8	75081471
	Los Alamos Lab	1-856004458-A1	75081471
	Lawrence Livermore Lab	1-946031193-A1	75081471
	Scripps Clinic and Res. Fndn.	1-951684089-A1	75087560

ATTACHMENT I TO CHAPTER 3—SINGLE LETTER OF CREDIT RECIPIENTS AND CENTRAL POINT ADDRESSES—Continued

State	Organization and payee No.	Recipient CRS-EIN [1]	Letter of credit
	Comptroller, Scripps Clinic and Res. Fndn. 476 Prospect Street, La Jolla, California 92037		
Connecticut	Yale University, 1-060646973-A1	1-060646973-A1, 1-060646973-A2, 1-060646973-A4	75089755
	Treasurer, Yale University, Grants and Contracts, 155 Whitney Avenue, New Haven, Conn. 05611.	1-060646973-A5, 1-060646973-A6, 1-060646973-A7, 1-060646973-A8	
District of Columbia	Georgetown University, 1-530196603-A1	1-530196603-A1, 1-530196603-A2, 1-530196603-A3	75083450
	Treasurer, Georgetown University, 37th and O Streets NW., Washington, D.C. 20007.	1-530196603-A4, 1-530196603-A5, 1-530196603-A6, 1-530196603-A7	
	George Washington University, 1-530196584-A1	1-530196584-A1, 1-530196584-A3	75083441
	Treasurer, George Washington University, Rice Hall, Washington, D.C. 20006		
	Gorgas Memorial Institute, 1-530196518-A1	1-530196518-A1	75083522
	Treasurer, Gorgas Memorial Institute, 2007 I Street NW., Washington, D.C. 20007.		
	National Academy of Sciences, 1-530196932-A1	1-530196932-A1, 1-530196932-A2	75085992
	Treasurer, National Academy of Sciences, 2101 Constitution, Avenue NW., Washington, D.C. 20037.		
Florida	University of Florida. 1-596001874-C7, Fiscal Contract Officer, University of Florida, Room 106, R. Johnson Hall, Gainesville, Florida 32611.	1-596001874-C7, 1-596001874-F2	75083326
	University of Miami, 1-590624458-A1	1-590624458-A1, 1-590624458-A2, 1-590624458-A3	75085253
	Chief Accountant, University of Miami, P.O. Box 9057, Coral Gables, Florida 33124.	1-590624458-A6	
Georgia	State of Georgia, 1-581130678-A1	1-580973190-A2, 1-581130678-A1, 1-581130678-A5	75083462
	Director, Department of Adm. Services, Fiscal Division, Pryor-Mitchell Building, Atlanta, Georgia 30334.	1-581130678-A6, 1-586000246-A2, 1-586002042-A1, 1-586002042-A2, 1-586002042-A3, 1-586002042-A4, 1-586002042-A6, 1-900000257-A1, 1-900000648-A1.	
Guam	Territory of Guam, 1-980018947-E6	1-000040215-A1, 1-000040218-A1, 1-000040228-A1	7508B368
	Department of Administration, P.O. Box 884, Government of Guam, Agana, Guam 96110.	1-000040238-A1,1-000307495-A1,1-000313462-A1,1-900000270-A1,1-900000273-A1,1-900000274-A1,1-980018947-A1,1-980018947-A2,1-980018947-A3,1-980018947-A4,1-980018947-A7,1-980018947-A8,1-980018947-A9,1-980018947-B1,1-980018947-B2,1-980018947-B3,1-980018947-B5,1-980018947-D1,1-980018947-E5,1-980018947-E7,1-980018947-F1.	
Illinois	University of Illinois Medical Center, 1-376000511-A5	1-376000511-A1,1-376000511-A3,1-376000511-A5,1-376000511-A8	75083885
	Business Manager, University of Illinois, Chicago, Illinois, P.O. Box 6998, Chicago, Illinois 60680.	01-376000511-A9,1-376000511-B2,1-376000511-B4,1-376000511-B5,1-376000511-C1,1-376000511-C2,1-376000511-C3.	
Kansas	Kansas State University 1-480771751-A1, Comptroller, Kansas State, University of Agriculture & Applied Sciences, Anderson Hall, Manhattan, Kansas 66502.	1-480771751-A1,1-480771751-A2	75084200
Louisiana	State of Louisiana, 1-900001516-A1	1-000014399-A1,1-000014607-A1,1-237208290-A1	75080020

	Assistant State Treasurer, State Treasurer's Office, P.O. Box 44154, Capital Station, Baton Rouge, Louisiana 70804	1-237208290-A2,1-720591509-A1,1-720637038-A1,1-720637038-A2,1-720645546-A1,1-720650883-A1,1-720695435-A1,1-720707278-A1,1-726000720-A1,1-726000733-A1,1-726000734-A1,1-726000734-A2,1-726000734-A3,1-726000743-A1,1-726000745-A1,1-726000756-A1,1-726000766-A1,1-726000800-A1,1-726000800-A2,1-726000813-A1,1-726000821-A1,1-726000821-A2,1-726000821-A3,1-726000821-A4,1-726000821-A5,1-726000826-A1,1-726001901-A1,1-726011595-A1,1-726011595-A3,1-726011595-A5,1-726011595-A6,1-726011595-A8,1-726011595-A9,1-726012498-A1,1-726014571-A1,1-726101595-A1,1-900001256-A1,1-900001342-A1,1-900002575-A1	
Maine	Jackson Laboratories, 1-010211513-A1 Financial Officer, The Jackson Laboratories, Otter Creek Road, Bar Harbor, Maine 04609	1-01211513-A1	75087315
Massachusetts	Boston University, 1-042103547-A1 Comptroller, Boston University, 755 Commonwealth Avenue, Boston, Mass 02215.	1-042103547-A1, 1-042103547-A2, 1-042103547-A4	75081272
	Forsyth Dental Center, 1-042104230-A2 Assistant Treasurer, Forsyth Dental Center, 140 Fenway, Boston, Mass 02115	1-042104230-A1, 1-042104230-A2	75083375
	Harvard University 1-042103580-B1 Office of the Comptroller President & Fellows of Harvard College Cambridge, Mass. 02138	1-042103580-A2, 1-042103580-A3, 1-042103580-A4 1-042103580-A5, 1-042103580-A6 1-042103580-A7, 1-042103580-A8, 1-042103580-A9, 1-042103580-B1	75083630
	Massachusetts General Hospital, 1-041564655-A4 Treasurer, Massachusetts General Hospital, 45 Milk Street, Boston, Mass 02114.	1-041564300-A1, 1-041564655-A3, 1-041564655-A4 1-041564655-A5	75084810
	Massachusetts Institute of Technology, 1-042103594-A1 Fiscal Officer, Division of Sponsored Research, Massachusetts Institute of Technology, Cambridge, Mass. 02139.	1-042103594-A1, 1-042103594-A2	75084836
	Worcester Foundation, 1-042121658-A1 Finance Officer, Worcester Foundation for Experimental Biology, Inc., 222 Maple Avenue, Shrewsbury, Massachusetts 01545	1-042121658-A1	75089680
Maryland	Johns Hopkins University, 1-520595110-A5, University Budget Officer Johns Hopkins University, Garland Hall, Rm 327, Charles and 34th Streets, Baltimore, Md. 21218.	1-000701501-A1, 1-520595110-A1, 1-520595110-A2, 1-520595110-A3, 1-520595110-A4, 1-520595110-A5	75084130
Michigan	University of Michigan, 1-386006309-A1 University Cashier, Regents of the University of Michigan, 1015 L.S. & A Bldg., Ann Arbor, Michigan 48104.	1-386006309-A1, 1-386006309-A2, 1-386006309-A3 1-386006309-A4, 1-386006309-A5, 1-386006309-A6, 1-386006309-A7, 1-386006309-A8, 1-386006309-A9, 1-386006309-B1,1-386006309-B2	75085301
Minnesota	Mayo Foundation, 1-416011702-A1 Treasurer, Mayo Foundation, 200 First Street, SW., Rochester, Minnesota 55901.	1-4160011702-A1, 1-4160011702-A2	75084875
	University of Minnesota, 1-416007513-A5 Director, Research Administration, 105 Admin. Servs. Building, 2610 University Avenue, St. Paul, Minnesota 55114.	1-416007513-A1, 1-416007513-A2, 1-416007513-A3 1-416007513-A5, 1-416007513-A8, 1-416007513-B2, 1-416007513-B3, 1-416007513-B4, 1-416007513-B5, 1-416007513-B7	75085448
Missouri	Midwest Research Institute, 1-440545878-A1 Treasurer, Midwest Research Institute, 425 Volker Blvd., Kansas City, Missouri 64110.	1-440545878-A1	75085361
Nebraska	State of Nebraska, 1-470491233-C5	1-000021900-A1, 1-210674761-A1, 1-470491233-A1	75086320

ATTACHMENT I TO CHAPTER 3—SINGLE LETTER OF CREDIT RECIPIENTS AND CENTRAL POINT ADDRESSES—Continued

State	Organization and payee No.	Recipient CRS-EIN¹	Letter of credit
	State of Nebraska Accounting Dept., Administrative Services Office, State Capitol Bldg., Lincoln, Nebraska 68509	1-470491233-A3, 1-470491233-A4, 1-470491233-A6, 1-470491233-A7, 1-470491233-A8, 1-470491233-A9, 1-470491233-B1, 1-470491233-B2, 1-470491233-B3, 1-470491233-B4, 1-470491233-B5, 1-470491233-B6, 1-470491233-B7, 1-470491233-B8, 1-470491233-B9, 1-470491233-C1, 1-470491233-C2, 1-470491233-C3, 1-470491233-C4, 1-470491233-C5, 1-470491233-C6, 1-470491233-C7, 1-470491233-C8, 1-470491233-C9, 1-470491233-D1, 1-470491233-D2, 1-470491233-D4, 1-476000479-A1, 1-476000535-A1, 1-476000535-A8, 1-741699874-A1, 1-900001910-A1, 1-900001919-A1, 1-900002209-A1, 1-900002333-A1, 1-900003427-A1, 1-900003437-A1	
New York	Adelphi University, 1-111630741-A1 Business Manager, Adelphi University, South Avenue, Garden City, New York 11530.	1-111630741-A1	75080040
	Albany Medical Center, 1-141338310-A1, Assistant Treasurer, Albany Medical College of Union University, 47 New Scotland Avenue, Albany, New York 12208	1-141338310-A1	75080150
	Children's Hospital of Buffalo, 1-160748423-A1 Comptroller, Children's Hospital of Buffalo, 219 Bryant Street, Buffalo, N.Y. 14222.	1-160748423-A1	75082160
	New York Medical College, 1-131099420-A1 Treasurer, New York Medical College, Flower/Fifth Avenue Hospitals, 1 East 105th Street, New York, N.Y. 10029.	1-131099420-A1	75086270
	New York University, 1-135562308-A1 Assistant Controller, New York University, 500 Kimball Hall, Washington Square, New York, New York 10003	1-135562308-A1, 1-135562308-A3, 1-135562308-A4 1-135562308-A5, 1-135562308-A6	75086330
	New York University Medical Center, 1-135562309-A1 Comptroller, New York University Medical Center, 550 First Avenue, New York, New York 10016	1-135562308-A2, 1-135562308-B1, 1-135562309-A1, 1-135562309-A2 1-135562309-A3, 1-229124053-A1	75086333
	University of Rochester, 1-160743209-A1, Research Accountant University of Rochester, River Campus, Rochester, New York 14627	1-160743209-A1, 1-160743209-A2, 1-160743209-A3, 1-160743209-A4, 1-160743209-A5	7508272
	Research Foundation of the State, University of New York, 1-141368361-J3, Comptroller, Research Foundation of State University of New York, P.O. Box 7126, Albany, New York 12224	1-131819472-A1, 1-132633612-A1, 1-141363361-A1, 1-141368361-A1, 1-141368361-A2, 1-141368361-J3, 1-146013200-E4, 1-146013200-E5, 1-146013200-E6, 1-146013200-E7, 1-146013200-E8, 1-146013200-E9, 1-146013200-F1, 1-146013200-F2, 1-146013200-F3, 1-146013200-F4, 1-146013200-F5, 1-146013200-F6, 1-146013200-F7, 1-146013200-F8, 1-146013200-F9, 1-146013200-G1, 1-146013200-G2, 1-146013200-G3, 1-146013200-G4, 1-146013200-G5, 1-146013200-G6, 1-146013200-G7, 1-146013200-G8, 1-146013200-G9, 1-146013200-H1, 1-146013200-H2, 1-146013200-H3, 1-146013200-H4, 1-146013200-J3, 1-146013200-K4, 1-146013200-L5, 1-146013200-L6, [illegible]	75087210
	Research Foundation of the City, University of New York, 1-131988190-A1	1-131988190-A1, 1-131988190-A6	75082337

	Treasurer, Research Foundation of the City, University of New York, 1411 Broadway, New York, New York 10018		
	State of New York, 1-146013200-J7 Director, State Accounts, Alfred E. Smith, Building, Albany, New York 12225	1-146013200-A1, 1-146013200-A2, 1-146013200-A3 1-146013200-A4, 1-146013200-A5, 1-146013200-A6, 1-146013200-A7, 1-146013200-A8, 1-146013200-A9, 1-146013200-B1, 1-146013200-B2, 1-146013200-B3, 1-146013200-B4, 1-146013200-B5, 1-146013200-B6, 1-146013200-B7, 1-146013200-B8, 1-146013200-B9, 1-146013200-C1, 1-146013200-C2, 1-146013200-C3, 1-146013200-C4, 1-146013200-C5, 1-146013200-C6, 1-146013200-C8, 1-146013200-C9, 1-146013200-D1, 1-146013200-D2, 1-146013200-D3, 1-146013200-D4, 1-146013200-D5, 1-146013200-D6, 1-146013200-D7, 1-146013200-D9, 1-146013200-E1, 1-146013200-E2, 1-146013200-E3, 1-146013200-H5, 1-146013200-H6, 1-146013200-H7, 1-146013200-H8, 1-146013200-H9, 1-146013200-I1, 1-146013200-I2, 1-146013200-I3, 1-146013200-I4, 1-146013200-I7, 1-146013200-I8, 1-146013200-J1, 1-146013200-J4, 1-146013200-J5, 1-146013200-J6, 1-146013200-J7, 1-146013200-J8, 1-146013200-J9, 1-146013200-K1, 1-146013200-K2, 1-146013200-K3, 1-146013200-K6, 1-146013200-K7, 1-146013200-K9, 1-146013200-L3, 1-146013200-L4, 1-146013200-L8	75086340
Ohio	Case Western Reserve University, 1-341018992-A1 Comptroller Case Western Reserve University, 2040 Adelbert Road, Cleveland, Ohio 44106	1-341018992-A4, 1-341018992-A1, 1-341018992-A2	75089472
Tennessee	St. Jude's Children's Research Hospital, 1-620646012-A1 Treasurer, St. Jude's Children's Hospital, 332 N. Lauderdale, Memphis, Tennessee 38101	1-62646012-A1	75083427
Texas	Baylor University College of Medicine, 1-741613878-A2 Business Manager, Baylor College of Medicine, 1200 Moursund Ave., Houston, Texas 77025	1-741613878-A1, 1-741613878-A2	75081070
	University of Texas at Houston Health Center, 1-741761309-A4 Associate Dean for Business Affairs, University of Texas, Medical School, P.O. Box 20036 Houston, Texas 77025	1-741761309-A4, 1-741761309-A6	75088056
	University of Texas Medical School, 1-756002868-A4 Business Manager, University of Texas, Southwestern Medical Schools, 5323 Harry Hines Blvd., Dallas, Tex 75235	1-756002868-A3, 1-756002868-A4, 1-756002868-A5	75088130
	University of Texas, M.D. Anderson Hospital, 1-746001118-A1 Supervisor, Grant Reporting, M.D. Anderson Hospital, University of Texas, 6723 Bertner Ave., Houston, Texas 77025	1746001118-A1	75088910
	University of Texas Medical Branch, Galveston, Texas, 1-74600949-A1 Business Manager, University of Texas, Medical Branch, 1000 Strand, Galveston, Texas 77550	1-74600949-A1	75088916
Utah	University of Utah and University of Utah Research 1-876000525-A6 Controller, University of Utah, 122 Park Building, Salt Lake City, Utah 84112	1-876000525-A1, 1-876000525-A2, 1-876000525-A3, 1-876000525-A6, 1-876000525-A7, 1-876000525-A8	75089067
Washington	University of Washington, 1-916001537-A5, Director, Office of Grant/Contract Services, University of Washington, 211 Administration Building, Seattle, Washington 98195	1-916001537-A1, 1-916001537-A2, 1-916001537-A4, 1-916001537-A5, 1-916001537-A6, 1-916001537-A9	75089320
Wisconsin	State of Wisconsin, 1-396006469-B1	1-000039594-A1, 1-000702000-A1, 1-390808464-A1	7508H610

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State	Organization and payee No.	Recipient CRS-EIN [1]	Letter of credit
	Budget Operations, State Budget Office, One West Wilson St., Madison Wisconsin 53607.	1-391051231-A1, 1-396006436-A1, 1-396006443-A3, 1-396006447-A1, 1-396006461-A1, 1-396006461-A2, 1-396006461-A3, 1-396006461-A4, 1-396006461-A5, 1-396006461-A6, 1-396006461-A7, 1-396006461-A8, 1-396006461-A9, 1-396006461-B1, 1-396006466-A1, 1-396006469-A1, 1-396006469-A5, 1-396006469-A6, 1-396006469-A7, 1-396006469-B1, 1-396006469-B5, 1-396006487-A1, 1-396006487-A2, 1-396006488-A1, 1-396006492-A1, 1-396006492-A2, 1-396006492-A3, 1-396006492-A5, 1-396006492-A6, 1-396006492-A7, 1-396006492-A8, 1-396006492-B1, 1-396006492-B2, 1-396006492-B3, 1-396006492-B4, 1-396006492-B5, 1-396006492-B6, 1-396006492-B7, 1-396006492-B8, 1-396006492-B9, 1-396006492-C1, 1-396006492-C2, 1-396006492-C3, 1-396006492-C4, 1-396006492-C5, 1-396006492-C6, 1-396006492-C7, 1-396006492-C8, 1-396006492-C9, 1-396006492-D1, 1-396028867-A1, 1-396028867-A2, 1-396091677-A1, 1-396091677-A2, 1-396320507-A1, 1-900000022-A1, 1-900002012-A1, 1-900002564-A1, 1-900002665-A1, 1-900003134-A1.	

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[1] Central Registry-System Entity Identification Number (CRS-EIN).

CRS-EIN is a twelve digit number used to identify a recipient organization/individual in the HHS Central Registry System (CRS). This system utilizes a standard identification number within HHS to identify recipients of Federal assistance-like programs. The first digit identifies whether the recipient is an organization (1) or individual (2). The next nine (9) digits uniquely associate the organization/individual to an Employer Identification Number assigned by the Internal Revenue Service in the case of an organization, or a Social Security Number assigned by the Social Security Administration in the case of an individual. A two character suffix code is assigned by the Central Registry System, HHS, to identify component levels within the recipient organization, such as: School of Medicine, Research Division, Department of Biology, etc. A suffix is not applied to a Social Security Number since that number is unique to each individual.

[49 FR 14049, Apr. 9, 1984. Redesignated at 49 FR 36110, Sept. 14, 1984]

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- Agency head 302.100
- "A-76" 307.3
- Amendments to Solicitations 315.410
- Administration of HHSAR 301.201
- Administration, Post-Award Contract 342.70
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- ADP Systems Security 339.7002
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APPENDIX A—PUBLIC HEALTH SERVICE

(Parts PHS 300 to PHS 399)

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SUBCHAPTER A—GENERAL

PART PHS 301—PHS ACQUISITION REGULATION SYSTEM

Subpart PHS 301.1—Purpose, Authority, Issuance

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PHS 301.102 Authority.
PHS 301.103 Applicability.
PHS 301.104 Issuance.
PHS 301.104-1 Publication and code arrangement.
PHS 301.104-2 Arrangement of regulations.
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Subpart PHS 301.2—Administration

PHS 301.201 Maintenance of the PHSAR.
PHS 301.270 Procurement Management Advisory Committee.
PHS 301.271 Timing of PHSAR revisions.

Subpart PHS 301.4—Deviations From the FAR

PHS 301.470 Procedure.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 36237, Sept. 14, 1984, unless otherwise noted

Subpart PHS 301.1—Purpose, Authority, Issuance

PHS 301.101 Purpose.

(a) The Public Health Service Acquisition Regulation (PHSAR) is issued to establish uniform acquisition policies and procedures throughout PHS which are necessary to implement or supplement the Department of Health and Human Services Acquisition Regulation (HHSAR).

(b) PHS issuances do not reiterate material published in the HHSAR or the Federal Acquisition Regulation (FAR).

(c) The PHSAR implements and supplements the HHSAR. Implementing material expands upon or indicates the manner of compliance with the related HHSAR. Supplementing material is new material which has no counterpart in the HHSAR. The omission of sections or subsections in PHSAR means no further explanation or qualification is necessary for implementation within PHS. Therefore, in order to obtain comprehensive coverage and assure consideration of all acquisition policies and procedures pertinent to PHS, the FAR, HHSAR, and PHSAR should be read.

PHS 301.102 Authority.

(a) The HHSAR authorizes supplementation or implementation of the FAR and HHSAR in accordance with prescribed procedures (see 301.301) in order to publish essential acquisition instructions, policies, and procedures that do not conflict with, supersede or duplicate that prescribed by the FAR and the HHSAR.

PHS 301.103 Applicability.

The FAR, HHSAR and PHSAR issuances apply to all acquisitions made by PHS procuring activities as defined in FAR 1.103.

PHS 301.104 Issuance.

PHS 301.104-1 Publication and code arrangement.

(a) The PHSAR is published in the same forms as indicated in FAR 1.104-1(a).

(b) PHS issuances will be published on yellow pages in looseleaf form for insertion into the HHSAR.

PHS 301.104-2 Arrangement of regulations.

(a) *General.* The PHSAR conforms to the FAR and HHSAR with respect to divisional arrangements; i.e., subchapters, parts, subparts, sections, subsections, and paragraphs.

(c) *References and citations.*

(2) This regulation shall be referred to as the Public Health Service Acquisition Regulation (PHSAR), Appendix A to the Department of Health and Human Services Acquisition Regulation. Any reference shall be cited as "PHS" followed by the appropriate number.

(3) Citations of authority shall be incorporated where necessary. All FAR reference numbers shall be preceded by "FAR." References to the HHSAR

shall state only the number without the prefix "HHSAR."

PHS 301.104-3 Copies.

Copies of the PHSAR in FEDERAL REGISTER form may be purchased by the public from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Looseleaf copies of the PHSAR may be obtained by departmental personnel having a need for the document by placing an order with a Directives Distribution Coordinator in accordance with General Administration Manual Chapter 1-00, Exhibit G, HHS Staff Manual System.

PHS 301.105 OMB approval under the Paperwork Reduction Act.

The following OMB control numbers apply to the information collection and recordkeeping requirements contained in this regulation:

PHSAR segment	OMB control No.
All segments (excluding PHS 352.223-70 and PHS 252.232-70)	0990-0128
PHS 352.223-70	0990-0137
PHS 352.232-70	0990-0134

[49 FR 36237, Sept. 14, 1984, as amended at 51 FR 20486, June 5, 1986]

Subpart PHS 301.2—Administration

PHS 301.201 Maintenance of PHSAR.

The PHSAR is maintained by the Division of Grants and Contracts, Office of Resource Management, Office of Management, PHS. The Director, Division of Grants and Contracts is responsible for developing and preparing material to be included in the PHSAR.

PHS 301.270 Procurement management advisory committee.

(a) The Director, Division of Grants and Contracts has established the Procurement Management Advisory Committee (PMAC) to assist and facilitate the planning and development of acquisition policies and procedures, and the resolving of operational problems affecting all acquisition activities in the PHS.

(b) The PMAC consists of members and alternates from the Office of the Assistant Secretary for Health, Alcohol, Drug Abuse, and Mental Health Administration, Centers for Disease Control, Food and Drug Administration, Health Resources and Services Administration, and National Institutes of Health.

[49 FR 36237, Sept. 14, 1984, as amended at 51 FR 20486, June 5, 1986

PHS 301.271 Timing of PHSAR revisions.

PHSAR revisions will be issued throughout the year as the need arises. PHS issuances shall be effective on the date cited in the FEDERAL REGISTER issuance or on the date of the transmittal notice which distributes it to PHSAR Staff Manual holders, unless otherwise directed.

Subpart PHS 301.4—Deviations From the FAR

PHS 301.470 Procedure.

(a) Requests for deviations from the FAR, HHSAR or any PHSAR issuance for implementation or supplementation shall be submitted in writing by the PHS agency principal official responsible for acquisition to the Director, Division of Grants and Contracts, ORM/OM/PHS for approval and/or further processing as may be required. When it is recognized that a deviation will be required prior to the issuance of a solicitation, the request for deviation must be processed and approved prior to release of the solicitation. When completion of a contract action is contingent on approval of a deviation, the request for deviation must be processed and approval granted by the appropriate level, prior to contract execution. In an exigency situation, initial verbal contact should be made with the Chief, Contracts Management Branch, DGC/ORM/OM/PHS or his/her designee. Only deviations to the PHSAR may be granted by the Director, Division of Grants and Contracts.

(b) Each request for deviation shall provide sufficient information to permit PHS compliance with the HHSAR. Generally, such requests shall contain the following in addition to the information required by 301.470(b):

(1) The name of the contractor and contract number, or the name of the proposed contractor and the solicitation number.

(2) A statement indicating whether or not the deviation had been previously requested. If so, outline the circumstances involved and the disposition of that request.

[49 FR 36237, Sept. 14, 1984, as amended at 51 FR 20486, June 5, 1986

PART PHS 302—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 302.1—Definitions

PHS 302.170 Definitions of terms.

The following terms, when utilized in PHS supplementing or implementing issuances to the HHSAR, have the meanings set forth below.

"PHS agencies" identifies collectively that group of organizational entities within the PHS which have assigned major health functions as currently shown in the PHS Organization Handbook. The PHS agencies are as follows:

Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA)
Centers for Disease Control (CDC)
Food and Drug Administration (FDA)
Health Resources and Services Administration (HRSA)
National Institutes of Health (NIH)

"PHS agency heads" identifies collectively those individuals who are given the responsibility and authority to manage and direct the efforts of the PHS agencies. These are the Administrators of ADAMHA and HRSA, Commissioner of FDA, and Directors of NIH and CDC.

"PHS contracting activities" identifies collectively those organizational elements of the PHS staff offices and the PHS agencies which have functional responsibility to contract for the acquisition of personal property and nonpersonal services.

[49 FR 36238, Sept. 14, 1984]

PART PHS 304—ADMINISTRATIVE MATTERS

Subpart PHS 304.1—Contract Execution

Sec.

PHS 304.170 Ratification of unauthorized contract awards.

Subpart PHS 304.6—Contract Reporting

PHS 304.670 PHS Contract Information System.
PHS 304.670-1 Policy.
PHS 304.670-2 PHS agency implementation.

Subpart PHS 304.71—Review and Approval of Proposed Contract Awards

PHS 304.7101 Contracts requiring review and approval.
PHS 304.7102 Conduct of the review.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 49 FR 36238, Sept. 14, 1984, unless otherwise noted.

Subpart PHS 304.1—Contract Execution

PHS 304.170 Ratification of unauthorized contract awards.

(c)(2) Where ratification of an unauthorized contract action within a PHS agency is requested, the contracting officer shall forward the file through acquisition channels to an official at an organizational level above the contracting officer. He/she in turn shall analyze and evaluate the contracting officer's submission and make appropriate recommendations regarding ratification to the head of the contracting activity.

The Administrative Services Center (ASC), Office of Management (OM), will submit its requests for ratification to the Director, OM through the Division of Grants and Contracts (DGC), Office of Resource Management, OM/PHS.

(c)(4)(i) PHS agencies, and ASC, OM/PHS, shall submit a report of ratification data as specified in 304.170. PHS agencies with several contracting offices will be required to collect the required information from these activities and submit a consolidated agency report.

(ii) These reports shall be submitted to DGC/ORM/OM/PHS within 20 days following the expiration of the reporting period. A consolidated PHS report will be prepared for submission to the Deputy Assistant Secretary for Procurement, Assistance, and Logistics as specified in 304.170.

Subpart PHS 304.6—Contract Reporting

PHS 304.670 PHS Contract Information System (PHSCIS).

The PHS Contract Information System consolidates all PHS contract data for the Department-wide Contract Information System (DCIS) from the PHS contracting activities.

PHS 304.670-1 Policy

The PHS principal officials responsible for acquisition (PORA) are responsible for ensuring that all required information is collected, submitted, and received into the PHSCIS in accordance with the central PHSCIS User Manual.

[49 FR 36238, Sept. 14, 1984, as amended at 51 FR 20486, June 5, 1986

PHS 304.670-2 PHS agency implementation.

It is the responsibility of the PORAs to develop and implement appropriate procedures within their activities to ensure that data submissions to the PHSCIS are timely, error free, and contain all the required information.

Subpart PHS 304.71—Review and Approval of Proposed Contract Awards

PHS 304.7101 Contracts requiring review and approval.

(b)(2)(i) In addition to the reviews required by 304.7101(a) and PHS 304.7101(c), internal reviews are to be conducted of acquisitions made by the following contracting offices in the National Institutes of Health for contract awards that fall below the dollar threshold for review and approval set forth in PHS 304.7101(c) but exceed the dollar threshold set forth herein:

National Cancer Institute—$750,000

National Heart, Lung, and Blood Institute—$500,000

National Institute of Environmental Health Sciences—$250,000

National Institute of Allergy and Infectious Diseases—$250,000

National Institute of Child Health and Human Development—$250,000

Centralized procuring activity for all other National Institutes of Health Research Organizations (Research Contracts Branch)—$250,000

These internal reviews shall be conducted by senior personnel with each contracting office. Typically, the chief of contracting office or his/her deputy should be involved in the review. Personnel involved in the contract action shall not perform the review. Each review shall be documented in writing, and any substantive issues identified shall be resolved prior to award.

(ii) Furthermore, to assure that an adequate review of smaller dollar acquisitions is made prior to award, a statistically significant sample of contract actions of dollar values, less than those amounts referenced in this section is required to be approved prior to award. This review and approval will be by the designated Reviewing Official listed in paragraph (c) (but see PHS 304.7102(a)). Records of such review actions will be maintained and will include documentation of the resolution of any significant issue raised by the review.

(iii) Contract awards and modifications of proposed architect-engineer contracts expected to exceed $50,000 shall be reviewed and approved prior to award by the reviewing official designated in PHS 304.7101(c).

(c) *Reviewing officials.* For PHS agency contract awards expected to exceed the dollar amounts stated in this paragraph, the reviewing official indicated will personally approve the award. Other than these specified requirements for the designated reviewing official, PHS agencies may assign other review and approval responsibilities at their discretion. The following officials shall be responsible for preaward contract review and approval of all proposed contracts and modifications which are expected to exceed the dollar limits expressed below:

Review and approval required for contracts expected to exceed	PHS acquisition activity	Reviewing official
	Office of the Assistant Secretary for Health	
$300,000	Administrative Services Center, Office of Management	Director, Administrative Services Center
	Alcohol, Drug Abuse and Mental Health Administration	
300,000	National Institute on Drug Abuse	Director, Division of Grants and Contracts Management
300,000	National Institute on Alcohol Abuse and Alcoholism	Do
300,000	National Institute of Mental Health	Do
300,000	St Elizabeths, Hospital, NIMH	Do
50,000	Addiction Research Center	Do
	Centers for Disease Control	
300,000	Centers for Disease Control	Director, Procurement and Grants Office
	Food and Drug Administration	
300,000	Division of Contracts and Grants Management	Director, Division of Contracts and Grants Management
300,000	National Center for Toxicological Research	Do
	National Institutes of Health	
1,500,000	National Cancer Institute	Director, Division of Contracts and Grants
1,000,000	National Heart, Lung, and Blood Institute	Do
	National Institutes of Environmental Health Sciences	
1,000,000	Research and development awards	Do
100,000	Other than research and development	Director, Division of Procurement
750,000	National Institute of Child Health and Human Development	Director, Division of Contracts and Grants
750,000	National Institute of Allergy and Infectious Diseases	Do
500,000	National Institute of Neurological and Communicative Disorders and Stroke	Do
	National Library of Medicine	
500,000	Research and development awards	Director, Division of Contracts and Grants
250,000	Other than research and development	Director, Division of Procurement
250,000	National Institute of Dental Research	Director, Division of Contracts and Grants
250,000	National Institute of Arthritis, Metabolism and Digestive Diseases	Do
750,000	Centralized procuring activity for all other National Institutes of Health Research Organizations	Do
250,000	Procurement Branch, Division of Procurement, ORS	Director, Division of Procurement
	Health Resources and Services Administration	
500,000	Awards made by Headquarters and the Indian Health Service	Director, Division of Grants and Procurement Management
300,000	Awards made by other than Headquarters and the Indian Health Service	Do

[49 FR 36238, Sept. 14, 1984, as amended at 51 FR 20486, June 5, 1986]

PHS 304.7102 Conduct of the review.

(a) *General.* The reviewing official is not required to personally perform the review, but he or she is responsible for assuring that the reviewer is knowledgeable in the acquisition field and has sufficient expertise to perform a comprehensive review and to make cogent recommendations to the reviewing official for actions exceeding the dollar amounts stated in this subpart. The reviewing official shall approve each proposed contract award that is reviewed.

SUBCHAPTER B—ACQUISITION PLANNING

PART PHS 305—PUBLICIZING CONTRACT ACTIONS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 305.2—Synopses of Proposed Contract Actions

PHS 305.202 Exceptions.

(b) A determination and finding has been executed by the Acting Assistant Secretary for Health after concurrence by the Administrator of the Office of Federal Procurement Policy and the Administrator of the Small Business Administration, which exempts for the period September 30, 1985 through September 29, 1988, certain acquisitions with the National Academy of Sciences (NAS) from the synopsis requirements set forth in FAR 5.201. This exemption is applicable only to acquisitions where NAS is the only source which can provide the measure of expertise, independence, objectivity, and audience acceptance necessary to meet the program requirements. To ensure that this exemption will be used only when appropriate, the agency competition advocate shall certify, prior to award, each acquisition with NAS which is not synopsized regardless of the dollar value. The certification must state that only NAS can provide the measure of expertise, independence, objectivity, and audience acceptance necessary to meet the program needs.

[51 FR 20487, June 5, 1986]

PART PHS 306—COMPETITION REQUIREMENTS

Subpart PHS 306.3—Other Than Full and Open Competition

Sec.

PHS 306.304 Approval of the justification.

Subpart PHS 306.5—Competition Advocates

PHS 306.502 Duties and responsibilities.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 51 FR 20487, June 5, 1986, unless otherwise noted.

Subpart PHS 306.3—Other Than Full and Open Competition

PHS 306.304 Approval of the justification.

(a)(3) The Deputy Assistant Secretary for Health, Operations, PHS, is designated as the approving official referenced in FAR 6.304(a)(3) and 306.304(a)(3).

Subpart PHS 306.5—Competition Advocates

PHS 306.502 Duties and responsibilities.

(b) The competition advocates for the PHS activities shall coordinate their efforts with the PHS competition advocate, the Deputy Assistant Secretary for Health Operations.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART PHS 314—FORMAL ADVERTISING

Subpart PHS 314.4—Opening of Bids and Award of Contract

Sec.

PHS 314.406-3 Other mistakes disclosed before award.

PHS 314.406-4 Mistakes after award.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart PHS 314.4—Opening of Bids and Award of Contract

PHS 314.406-3 Other mistakes disclosed before award.

(g)(3) In addition to the requirement in 314.406-3(g)(3), a copy of the data required by FAR 14.406-3(g)(3) shall be sent to the Office of General Counsel, Business and Administrative Law Division, Parklawn Building, Room 17A-32, 5600 Fishers Lane, Rockville, MD 20857. An information copy of the contracting officer's written statement of facts and circumstances shall be provided to the Contracts Management Branch, DGC/ORM/OM/PHS.

[51 FR 20488, June 5, 1986]

PHS 314.406-4 Mistakes after award.

(e)(2) The data shall be submitted as prescribed in PHS 314.406-3(g)(3).

[51 FR 20488, June 5, 1986]

PART PHS 315—CONTRACTING BY NEGOTIATION

Subpart PHS 315.4—Solicitation and Receipt of Proposals and Quotations

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

PHS 315.412 Late proposals and modifications.

(c)(1) When the principal official responsible for acquisition determines that certain classes of biomedical or behavioral research and development acquisitions should be subject to conditions other than those specified in FAR 52.215-10, Late Submissions, Modifications and Withdrawals of Proposals, he/she may authorize the use of the provision in PHS 352.215-10 in addition to the provision at FAR 52.215-10.

(2) When the provision in PHS 352.215-10 is included in the solicitation and a proposal is received after the exact time specified for receipt, the contracting officer, with the assistance of cost and technical personnel, shall make a written determination as to whether the proposal meets the requirements of the provision at PHS 352.215-10 and, therefore, can be considered.

[51 FR 43357, Dec. 2, 1986; 51 FR 45229, Dec. 17, 1987, as amended at 52 FR 44397, Nov. 19, 1987]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART PHS 323—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart PHS 323.70—Safety and Health

Sec.

PHS 323.7000 Scope of subpart.
PHS 323.7001 General.
PHS 323.7002 Policy.
PHS 323.7003 Actions required.
PHS 323.7004 Contract clause.
PHS 323.7005 Solicitation notice—construction.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 51 FR 20488, June 5, 1986, unless otherwise noted.

Subpart PHS 323.70—Safety and Health

PHS 323.7000 Scope of subpart.

This subpart prescribes the use of a safety and health clause in contracts involving hazardous material or operations, and procedures for developing and administering safety and health provisions.

PHS 323.7001 General.

Various statutes and regulations (e.g., Walsh-Healey Act; Service Contract Act) require adherence to minimum safety and health standards by contractors engaged in potentially hazardous work. Positive action to reduce accidents and conditions hazardous to health under all contracts is in the Government's interest since the cost of such accident and health hazards is borne by the Government through higher prices and sometimes by direct indemnification of contractors against liability claims.

PHS 323.7002 Policy.

(a) The guidance contained in FAR Subpart 23.3 shall be used for hazardous material as the primary reference. When that guidance is judged insufficient or does not meet the safety and health situation in the instant acquisition, this subpart shall be followed.

(b) Whenever the performance of a contract will require use of hazardous materials or operations, the contracting activity shall require the prime contractor and subcontractors to:

(1) Provide protection for the life and health of PHS employees, contractor employees, other persons involved with work on PHS programs and projects, and the public;

(2) Avoid accidental work interruptions which could delay progress of PHS programs and project;

(3) Maintain controls for the prevention of damage and loss to property; and

(4) Accumulate and provide data necessary for analysis of risk and loss factors relating to PHS programs and projects.

PHS 323.7003 Actions required.

(a) *Contracting activities.* Contracting activities shall use the clause set forth in PHS 352.223-70 as a guide in developing appropriate safety and health clauses for use in prospective contracts involving the following:

(1) Services or products;

(2) Research, development, or test projects;

(3) Transportation of hazardous materials; and

(4) Construction, including construction of facilities on the contractor's premises.

(b) *Safety officers.* OPDIV safety officers shall advise and assist initiators of acquisition requests and contracting officers in:

(1) Determining whether safety and health provisions should be included in a prospective contract;

(2) Selecting or developing safety and health clause provisions for incorporation in a prospective contract;

(3) Evaluating a prospective contractor's safety and health programs; and

(4) Conducting post-award review and surveillance to the extent deemed necessary.

(c) *Initiators.* Initiators of acquisition requests for items described in paragraph (a) of this section shall:

(1) During the preparation of a request for contract, and in the RFP or IFB:

(i) Ensure that hazardous materials and operations to be utilized in the performance of the contract are clearly identified; and

(ii) Coordinate with the appropriate safety officer to ensure that all hazardous materials and operations are evaluated and that adequate safety requirements are established in the RFP or IFB.

(2) During the period of performance:

(i) Apprise the contracting officer of any noncompliance with safety and health provisions identified in the contract; and

(ii) Cooperate with the safety officer in conducting review and surveillance activities.

PHS 323.7004 Contract clause.

All contracts which require the use of hazardous materials or operations shall include a clause to provide adherence to minimum safety and health standards. The clause set forth in PHS 352.223-70 may be used or appropriately modified to meet the needs of the individual contract.

PHS 323.7005 Solicitation notice—construction.

The contracting officer shall include the clause in PHS 352.223-71 in all solicitations and resultant contracts for construction and construction services.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART PHS 333—PROTESTS, DISPUTES, AND APPEALS

Subpart PHS 333.1—Protests

Sec.
PHS 333.102 General.
PHS 333.104 Protests to GAO.
PHS 333.105 Protests to GSBCA.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 51 FR 20488, June 5, 1986, unless otherwise noted.

Subpart PHS 333.1—Protests

PHS 333.102 General

The Division of Grants and Contracts (DGC), ORM/OM/PHS, will participate directly in the resolution of protests against PHS agencies when the Office of the Secretary, HHS, requests DGC involvement, or when DGC considers a protest action to be sensitive or controversial, or otherwise has an interest in the protest. In cases where DGC will participate, the cognizant PHS contracting office shall be notified. In those instances, all file materials and written statements normally forwarded directly to the Departmental Protest Control Officer shall be forwarded to DGC, ORM/OM/PHS.

PHS 333.104 Protests to GAO.

(a) *General.* (2) A copy of the protest files shall be sent to the Office of General Counsel, Business and Administrative Law Division (OGC-BAL), Parklawn Building, Room 17A-32, 5600 Fishers Lane, Rockville, MD 20857. In addition, an information copy of the contracting officer's statement of facts required by 333.104(a)(2)(i) shall be sent to the Contracts Management Branch, DGC/ORM/OM/PHS.

(b) *Protests before award.* (1) The head of the contracting activity authority to approve the written finding required by FAR 33.104(b)(1) to authorize a contract award while a protest is pending, may be delegated to an organizational level no lower than the Executive Officer of each PHS Agency.

(4) The data shall be submitted as prescribed in PHS 333.104(a)(2).

(c) *Protests after award.* (1) The data shall be submitted as prescribed in PHS 333.104(a)(2).

(2) The head of the contracting activity authority to authorize contract performance notwithstanding a protest as set forth in FAR 33.104(c)(2), may be delegated to an organizational level no lower than the Executive Officer of each PHS Agency.

PHS 333.105 Protests to GSBCA.

(b) The copy of the protest file to be sent to OGC-BAL shall be sent to OGC-BAL, Parklawn Building, Room 17A-32, 5600 Fishers Lane, Rockville, MD 20857. In addition, an information copy of the contracting officer's statement of facts required by 333.105(b)(1) shall be sent to the Contracts Management Branch, DGC/ORM/OM/PHS.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART PHS 335—RESEARCH AND DEVELOPMENT CONTRACTING

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

PHS 335.080 Special determinations and findings affecting research and development contracting.

The Assistant Secretary for Health shall sign individual and class determinations and findings for:

(a) Acquisition or construction of equipment or facilities on property not owned by the United States pursuant to 42 U.S.C. 241(a)(7); and

(b) Use of an indemnification provision in a research contract pursuant to 42 U.S.C. 241(a)(7).

[51 FR 20489, June 5, 1986]

PART PHS 336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart PHS 336.6—Architect-Engineer Services

Sec.

PHS 336.680 Program of Requirements approval.
PHS 336.681 Funding.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 51 FR 20489, June 5, 1986, unless otherwise noted.

Subpart PHS 336.6—Architect-Engineer Services

PHS 336.680 Program of Requirements approval.

The programmatic and technical requirements for PHS design projects are established in a special document known as a Program of Requirements (POR). In the case of design projects involving the construction of new space, including new facilities, replacement facilities, and building additions, the contracting officer shall ensure that the Office of the Assistant Secretary for Health has approved, or waived approval of, a POR prior to the issuance of the synopsis or solicitation for architectural/engineering services.

PHS 336.681 Funding.

(a) The contracting officer shall ensure that the agency financial management officer has identified and certified that design funds have been appropriated and apportioned prior to the release of a synopsis or solicitation for architect-engineer services for the types of acquisitions specified in PHS 336.680. New facilities, replacement facilities, and building additions must only be acquired with funds appropriated for that specific project as evidenced by either (1) specific language in an appropriations act, or (2) Congressional appropriations intent as reflected in appropriations committee reports or Congressional budget justification.

(b) In the case of ADAMHA, FDA, HRSA, and NIH, the referenced agency financial management officer is the Director of the agency's Division of Financial Management. In the case of CDC, this official is the Director of the Financial Management Office. Subject to HRSA concurrence, funding for projects of the Indian Health Service/HRSA may be certified by the designated financial management officer within the IHS Office of Administration.

(c) The funding source certification shall include identification of the title, appropriation symbol, and fiscal year of the appropriation plus any relevant project or activity description in the appropriation act or reports.

(d) In an unusual circumstance where time is critical, a synopsis or solicitation for architect-engineer services may be issued after the POR has been approved if the agency financial management officer certifies that appropriation and apportionment of proper funds as set forth in paragraph (a) above are expected within 60 days. In such cases, the synopsis or solicitation must specify that award is subject to the availability of funds. In these circumstances the contracting officer shall ensure that contract award is not made until the agency financial management officer has certified in writing that proper funds have been appropriated and apportioned. Other ex-

best copy available

ceptions to the funding requirements set forth in paragraph (a) above, must be specifically approved in writing by the Office of the Assistant Secretary for Health prior to the release of a synopsis or solicitation for architect engineer services for new facilities, replacement facilities, and building additions.

SUBCHAPTER H—CLAUSES AND FORMS

PART PHS 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart PHS 352.2—Texts of Provisions and Clauses

Sec.

PHS 352.215-10 Late proposals, modifications of proposals, and withdrawals of proposals.
PHS 352.223-70 Safety and health.
PHS 352.223-71 Safety and health—construction.
PHS 352.232-70 Additional payment provision.
PHS 352.280-1 Protection of human subjects.
PHS 352.280-2 Care of laboratory animals.
PHS 352.280-3 Maximum allowable cost for drugs.
PHS 352.280-4 Contracts awarded under the Indian Self-Determination Act.
PHS 352.280-6 Demurrage charge provisions for reusable cylinders and containers.

Subpart PHS 352.3—Provision and Clause Matrices

PHS 352.380-4 Contract clauses for contracts awarded under the Indian Self-Determination Act.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 36242, Sept. 14, 1984, unless otherwise noted.

Subpart 352.2—Texts of Provisions and Clauses

PHS 352.215-10 Late proposals, modifications of proposals, and withdrawals of proposals.

As prescribed in PHS 315.412, the following provision may be included in the solicitation when authorized by the principal official responsible for acquisition.

LATE PROPOSALS, MODIFICATIONS OF PROPOSALS, AND WITHDRAWALS OF PROPOSALS (NOV 1986)

Notwithstanding the procedures contained in the provision of this solicitation entitled Late Submissions, Modifications, and Withdrawals of Proposals, a proposal received after the date specified for receipt may be considered if it offers significant cost or technical advantages to the Government, and it was received before proposals were distributed for evaluation, or within five calendar days after the exact time specified for receipt, whichever is earlier.

(End of provision)

[51 FR 43357, Dec. 2, 1986; 51 FR 45229, Dec. 17, 1987, and 52 FR 44357, Nov. 19, 1987]

PHS 352.223-70 Safety and health.

The following clause is covered by the policy set forth in Subpart PHS 323.70 and is to be used in accordance with the instructions set forth in PHS 323.7002 and PHS 323.7003.

SAFETY AND HEALTH (APR 1984)

(a) In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to all property; and for avoidance of work interruptions in the performance of the contract; the Contractor will comply with the following standards: (Insert codes, standards, and criteria (including any applicable State and local requirements) prescribed by the Safety Officer.)

Further, the Contractor shall take or cause to be taken such additional safety measures as the Contracting Officer may determine to be reasonably necessary; *Provided*, that, if compliance with such additonal safety measures results in a material increase in the cost or time of performance of the contract, an equitable adjustment will be made in accordance with the clause of this contract entitled "Changes."

(b) Prior to commencement of work, the Contractor will submit in writing its plan for complying with the safety and health provisions of this contract, and will meet with the Conracting Officer or his/her designated representative to discuss and develop a mutual understanding relative to administration of the overall safety program.

(c) During the performance of work under this contract, the Contractor share comply with all procedures prescribed by the Contracting Officer for the control and safety of persons visiting the job site and will comply with such requirements to prevent accidents as may be prescribed by the Contracting Officer.

(d) The Contractor will maintain an accurate record of, and report to the Contracting Officer in such manner as the Contracting Officer may prescribe, all accidents and incidents resulting in death, traumatic injury, occupational disease, and/or damage to all property incident to work performed under the contract.

(e) The Contracting Officer shall notify (if otherwise, confirm in writing) the Contractor of any noncompliance with the provisions of this clause and corrective action to be taken. After receipt of such notice, the Contractor shall immediately take such corrective action. (Such notice, when delivered to the Contractor or its representative at the site of the work, shall be deemed sufficient for the purpose.) If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be the subject of claim for extension of time or for costs or damages by the Contractor.

(f) The Contractor shall insert the substance of this clause in each subcontract involving the use of hazardous materials or operations. Compliance with the provisions of this clause by subcontractors will be the responsibility of the Contractor.

(End of clause)

[51 FR 20489, June 5, 1986]

PHS 352.223-71 Safety and health—construction.

The following clause shall be included in all solicitations and resultant contracts for construction and construction services, as required by PHS 323.7005.

Safety and Health—Construction (Apr 1984)

Your attention is invited to the regulations issued by the Secretary of Labor pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) entitled "Safety and Health Regulations for Construction" (29 CFR Part 1926). The Contractor is required to comply with the referenced regulations to the extent that the resultant contract involves construction.

(End of clause)

[51 FR 20490, June 5, 1986]

PHS 352.232-70 Additional payment provision.

The following clause shall be included in all solicitations and resultant contracts for construction which contain the "Payments Under Fixed-Price Construction Contracts" clause set forth in FAR 52.232-4:

Additional Payment Provision (Apr 1984)

Unless otherwise stated in this contract, there will be taken into consideration in computing progress payments material that will be incorporated into the structure if such material is delivered at the site, or is delivered to the Contractor and properly stored by it in a suitable warehouse, storage yard, or similar place either within 25 miles of the site or as otherwise approved by the Contracting Officer. Before each payment is made, the Contractor shall furnish to the Contracting Officer such evidence as he/she may require of the quantity and value of such material and that it will be incorporated into the structure. If such material is stored off the site, the Contractor shall also furnish to the Contracting Officer, before payment, properly executed bills of sale to the Government for the delivered material upon which such payment is to be made.

(End of clause)

[51 FR 20490, June 5, 1986]

PHS 352.280-1 Protection of human subjects.

The policy and procedures to be followed whenever individuals may be involved as subjects in research activities supported or conducted by the Department under a contract are provided in Subpart PHS 380.1 and 45 CFR Part 46, Protection of Human Subjects.

(a) The following provisions shall be included in solicitations expected to involve human subjects:

Notice To Offerors Of Requirements Of 45 CFR Part 46, Protection Of Human Subjects (Sep 1985)

(a) Copies of the Department of Health and Human Services (Department) regulations for the protection of human subjects, 45 CFR Part 46, are available from the Office for Protection from Research Risks (OPRR), National Institutes of Health, Bethesda, Maryland 20892. The regulations provide a systematic means, based on established ethical principles, to safeguard the rights and welfare of individuals who participate as subjects in research activities supported or conducted by the Department.

(b) The regulations define a human subject as a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention of interaction with the individual, or (2) identifiable private information. The regulations extend to the use of human organs, tissue, and body fluids from individually identifiable human subjects as well as to graphic, written, or recorded information derived from individually identifiable human subjects. The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 CFR Part 46.

(c) Activities in which the only involvement of human subjects will be in one or more of the categories set forth in 45 CFR 46.101(b)(1-6) are exempt from coverage.

(d) Inappropriate designations of the noninvolvement of human subjects or of exempt categories of research in a project may result in delays in the review of a proposal. The Public Health Service will make a final determination of whether the proposed activities are covered by the regulations or are in an exempt category, based on the information provided in the proposal. In doubtful cases, *prior consultation with OPRR, (telephone: 301-496-7014), is recommended.*

(e) In accordance with 45 CFR Part 46, prospective Contractors being considered for award shall be required to file with OPRR an acceptable Assurance of Compliance with the regulations, specifying review procedures and assigning responsibilities for the protection of human subjects. The initial and continuing review of a research project by an institutional review board shall assure that the rights and welfare of the human subjects involved are adequately protected, that the risks to the subjects are reasonable in relation to the potential benefits, if any, to the subjects and the importance of the knowledge to be gained, and that informed consent will be obtained by methods that are adequate and appropriate. Prospective Contractors proposing research that involves human subjects shall be contacted by OPRR and given detailed instructions for establishing an institutional review board and filing an Assurance of Compliance.

(f) It is recommended that OPRR be consulted for advice or guidance concerning either regulatory requirements or ethical issues pertaining to research involving human subjects.

(End of provision)

(b) The following clause shall be included in contracts involving human subjects:

PROTECTION OF HUMAN SUBJECTS (OCT 1986)

(a) The Contractor agrees that the rights and welfare of human subjects involved in research under this contract shall be protected in accordance with 45 CFR Part 46 and with the Contractor's current Assurance of Compliance on file with the Office for Protection for Research Risks, National Institutes of Health, Public Health Service. The Contractor further agrees to provide certification at least annually that the institutional review board has reviewed and approved the procedures which involve human subjects in accordance with 45 CFR Part 46 and the Assurance of Compliance.

(b) The Contractor shall bear full responsibility for the performance of all work and services involving the use of human subjects under this contract in a proper manner and as safely as is feasible. The parties hereto agree that the Contractor retains the right to control and direct the performance of all work under this contract. Nothing in this contract shall be deemed to constitute the Contractor or any subcontractor, agent or employee of the Contractor, or any other person, organization, institution, or group of any kind whatsoever, as the agency or employee of the Government. The Contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgement or otherwise, as an independent Contractor without imputing liability on the part of the Government for the acts of the Contractor or its employees.

(c) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements and/or standards stated in paragraphs (a) and (b), above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects such noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete the corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OPRR, NIH, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those Contractors with approved Department of Health and Human Services Human Subject Assurances.

(End of clause)

[51 FR 20490, June 5, 1986, as amended at 52 FR 9300, Mar. 24, 1987]

PHS 352.280-2 Care of laboratory animals.

The policies and procedures to be used when contracts involve live vertebrate animals are provided in Subpart PHS 380.2, and in the *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions* and accompanying implementation instructions published in a special edition of the *NIH Guide for Grants and Contracts*, Vol. 14, No. 8, June 25, 1985.

(a) The following provision shall be included in solicitations expected to involve vertebrate animals:

Notice To Offerors of Requirement for Adequate Assurance of Protection of Vertebrate Animal Subjects (SEP 1985)

The *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions* establishes a number of requirements for research activities involving animals. Before a PHS award may be made to an applicant organization, the organization shall file, with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), PHS, a written Animal Welfare Assurance which commits the organization to comply with the provisions of the *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions*, the Animal Welfare Act, and the *Guide for the Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources. In accordance with the *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions*, applicant organizations must establish a committee, qualified through the experience and expretise of its members, to oversee the institution's animal program, facilities and procedures. No PHS award involving the use of animals shall be made unless the Animal Welfare Assurance has been approved by OPRR. Prior to award, the contracting officer will notify Contractor(s) selected for projects that involve live vertebrate animals that an Animal Welfare Assurance is required. The contracting officer will request that OPRR negotiate an acceptable Animal Welfare Assurance with those Contractor(s). *For further information, OPRR may be contacted at NIH, Bethesda, Maryland 20892 (301-496-7041).*

(End of provision)

(b) The following clause shall be included in all contracts involving research on vertebrate animals:

Care of Live Vertebrate Animals (OCT 1986)

(a) Before undertaking performance of any contract involving research on live vertebrate animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with 7 U.S.C. 2316 and 9 CFR 2.25-2.28. The Contractor shall furnish evidence of such registration to the Contracting Officer.

(b) The Contractor shall acquire vertebrate animals used in research from a dealer licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR 2.1-2.11, or from a source that is exempt from licensing under those sections.

(c) The Contractor agrees that the care and use of any live vertebrate animals used or intended for use in the performance of this contract will conform with the *PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions*, the current Animal Welfare Assurance, the *Guide for the Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources and the pertinent laws and regulations of the United States Department of Agriculture (see 7 U.S.C. 2131 *et seq.* and 9 CFR Subchapter A, Parts 1-4). In case of conflict between standards, the more stringent standard shall be used.

(d) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements and/or standards stated in paragraphs (a) and (c), above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects such noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete corrective action within the period of time designated in the Contracing Officer's written notice of suspension, the Contracting Officer may, in consultation with OPRR, NIH, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those Contractors with approved Public Health Service Animal Welfare Assurances.

Note: The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which its research facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, Maryland 20782.

(End of clause)

[51 FR 20491, June 5, 1986, as amended at 52 FR 9300, Mar. 24, 1987]

PHS 352.280-3 Maximum allowable cost for drugs.

The following clause, or one reading substantially as follows, shall be included in all contracts subject to the provisions of the Maximum Allowable Cost (MAC) regulation and PHS 380.305.

MAXIMUM ALLOWABLE COST FOR DRUGS (APR 1984)

(a) Reimbursement for drugs provided or used under this contract shall be in accordance with the Maximum Allowable Cost (MAC) regulation set forth in 45 CFR Subtitle A, Part 19. In accordance with 19.3 of the MAC regulation, the amount which is recognized for reimbursement or payment purposes for any drug purchased under the terms of the contract shall not exceed the lowest of:

(1) The maximum allowable cost of the drug, if any, established in accordance with 19.5 of the MAC regulation plus a reasonable dispensing fee;

(2) The acquisition cost of the drug plus a reasonable dispensing fee; or

(3) The provider's usual and customary charge to the public for the drug: *Provided*, That:

(i) The maximum allowable cost established for any drug shall not apply to a brand of that drug prescribed for a patient which the prescriber has certified in his/her own handwriting is medically necessary for that patient; and *Provided, further*, That:

(ii) When compensation for drug dispensing is included in some other amount payable to the provider by the reimbursing or payment program agency, a separate dispensing fee will not be recognized.

(b) The Contractor agrees:

(1) To include the following solicitation notification in all applicable solicitations issued under this contract and to ensure that subcontractors include it in any subsequent applicable solicitation:

This acquisition is subject to the Maximum Allowable Cost (MAC) regulation set forth in Part 19 to Subtitle A of Title 45 of the Code of Federal Regulations.

(2) To include this clause, including this paragraph (b), in all applicable subcontracts, regardless of tier, awarded pursuant to this contract.

(3) To include the furnished MAC determination or acquisition cost data in all applicable solicitations issued under this contract and in all resultant subcontracts awarded pursuant to this contract.

(End of clause)

PHS 352.280-4 Contracts Awarded Under the Indian Self-Determination Act.

(a) Insert the following clauses in cost-reimbursement contracts awarded under the Indian Self-Determination Act as described in subpart PHS 380.4.

CLAUSE NO 1—DEFINITIONS (JUNE 1977)

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health and Human Services (HHS); and the term "his/her duly authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his/her authority.

(c) The term "Project Officer" means the person representing the Government for the purpose of monitoring contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the period of this contract.

(d) The term "Department" means the Department of Health and Human Services.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

(End of clause)

CLAUSE NO. 2—DISPUTES (JUNE 1977)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his/her duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(End of clause)

CLAUSE NO. 3—LIMITATION OF COST (JUNE 1977)

(a) It is estimated that the total cost to the Government for the performance of this contract will not exceed the estimated cost set forth in this contract and the Contractor agrees to use its best efforts to perform all work and all obligations under this contract within such estimated costs. If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost set forth in the contract, or, if at any time the Contractor has reason to believe that the total cost to the Government, for the performance of this contract, will be substantially greater or less than the estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the contract and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of such estimated cost unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in this contract has been increased by the Contracting Officer in writing, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

(End of clause)

CLAUSE NO. 4—ALLOWABLE COST (JUNE 1977)

(a) *Compensation for Contractor's performance.* Payment for the allowable cost, as herein defined and as actually incurred by the Contractor shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Allowable cost.* The allowable cost of performing the work under this contract shall be the cost actually incurred by the Contractor, either directly incident or properly allocable to the contract, in the performance of this contract in accordance with its terms. The allowable cost, direct and indirect, including acceptability of cost allocation methods, shall be determined by the Contracting Officer in accordance with:

(1)(i) "A Guide for Nonprofit Institutions Establishing Indirect Cost Rates for Research Grants and Contracts with the Department of Health and Human Services, HHS Publication OASC-5" or (ii) "A Guide for Hospitals, Grants and Contracts with the Department of Health and Human Services, HHS Publication OASC-3," or (iii) Subpart 1-15.7 of the Federal Procurement Regulations (41 CFR Subpart 1-15.7) if the contract is with a state or local government agency, or (iv) Subpart 1-15.4 of the Federal Procurement Regulations (41 CFR Subpart 1-15.4) if the contract is for the procurement of construction or architect-engineer services.

(2) The terms of the contract.

(End of clause)

CLAUSE NO. 5—NEGOTIATED OVERHEAD RATES (JUNE 1977)

(a) Notwithstanding the provisions of the clause of this contract entitled, "Allowable Cost," the allowable indirect costs shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible, but not later than six (6) months after the expiration of each of the Contractor's financial years or such period as may mutually be agreed upon by the Government and the Contractor, shall submit to the Contracting Officer, with a copy to the cognizant audit agency, a proposed final overhead rate or rates for that period based on the Contractor's cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles set forth in paragraph (b)(1) of Clause 4, as in effect on the date of this contract, and the same hereby incorporated herein by reference.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed final rate, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in this contract or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in this contract shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the clause of this contract entitled "Disputes."

(g) Submission of proposed provisional and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or his/her duly authorized representative, and agreements on provisional and/or final overhead rates entered into between the Contractor and the Secretary or his/her duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of (b), (d) and (e) above.

(End of clause)

CLAUSE NO. 6—PAYMENT (JUNE 1977)

(a) *Payment on account of allowable cost.* Once each month (or at more frequent intervals if approved by the Contracting Officer) the Contractor may submit to the Contracting Officer, in such form and reasonable detail as may be required, an invoice or voucher supported by a statement of costs incurred by the Contractor in the performance of this contract and claimed to constitute allowable costs. Promptly after receipt of each invoice or voucher, the Government shall, subject to the provisions of (b) below, make payment thereon as approved by the Contracting Officer.

(b) *Audit Adjustments.* At any time or times prior to settlement under this contract the Contracting Officer may have invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayment, or increased for underpayments on preceding invoices or vouchers.

(c) *Completion voucher.* On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "Completion Voucher" and upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and provisions of (d) below) the Government shall promptly pay to the Contractor any balance of allowable cost. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 6 months (or such longer period as the Contracting Officer may in his/her discretion approve in writing) from the date of such completion.

(d) *Applicable credits.* The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable cost hereunder when approved by the Contracting Officer.

(e) *Financial settlement.* Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract, and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are susceptible to exact statement by the Contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; Provided, That such claims are not known to the Contractor on the date of the execution of the release; And provided further, That the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(End of clause)

CLAUSE NO. 7—ADVANCE PAYMENTS (JUNE 1977)

(a) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (1) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (k)(4) as with all advance payments theretofore made, shall exceed the amount stated in paragraph (k)(1) hereof; and (3) without a properly certified invoice or invoices.

(b) *Special Bank Account.* Until all advance payments made hereunder are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor, and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (k)(2) hereof. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer or such other person or persons as he/she may designate in writing (hereinafter called the "Countersigning Agent"). Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(c) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. An interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(d) *Return of Funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advance previously made and liquidated) in excess of the amount specified in paragraph (k)(1) hereof. In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments are equal to the total estimated cost for the work under this contract or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate (including, without limitation, reimbursable costs incident to termination for cause and retrocession as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments until such advance payments shall have been fully liquidated. If upon completion, termination, or retrocession of the contract all advance payments have not been fully liquidated, the balances therefor shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(f) *Bank Agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation Act of August 23, 1935, 49 Stat. 685, as amended (12 U.S.C. 264).

(g) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder.

(h) *Lien on Property Under Contract.* Any and all advance payments made under this contract shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on its books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release to the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(i) *Insurance.* The Contractor represents and warrants that it is now maintaining with responsible insurance carriers, (1) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, it will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assembles, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to its insurance as the Administering Office may from time to time require.

(j) *Prohibition Against Assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(k) *Designations and Determinations.* (1) *Amount.* The amount of advance payments at any time outstanding hereunder shall not exceed $———.

(2) *Depository.* The bank designated for the deposit of payments made hereunder shall be:

(3) *Interest Charge.* No interest shall be charged for advance payments made hereunder. The Contractor shall charge interest at the rate of 6 percent per annum on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

(4) *Administering Office.* The office administering advance payments shall be the office designated as having responsibility for awarding the contract.

(l) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the administering office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the administering office, to the extent that such additional security is available.

(End of clause)

Clause No. 8—Examination of Records (June 1977)

(a) This clause is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States and the Secretary, or any of their duly authorized representatives, shall until expiration of 3 years after final payment under this contract or of the time period for the particular records in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20) whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States, or his/her duly authorized representatives shall, until expiration of 3 years after final payment under the subcontract or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20) whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchases orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above, for records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his/her duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

(End of clause)

Clause No. 9—Inspection and Reports (June 1977)

(a) *Inspection of work.* The Government shall have the right to inspect the work and activities under this contract, including without limitation, premises where any Government property may be located at such reasonable times and in such manner as it may deem appropriate and the Contractor shall afford the Government proper facilities and assistance for such inspection.

(b) *Reports.* The Contractor shall furnish such progress reports, schedules, financial and cost reports, and other reports, concerning the work under this contract as specified elsewhere in this contract. Cost and other financial data and projections furnished pursuant to this paragraph (b) shall not relieve the Contractor of the requirements for furnishing notice specified in the clause of this contract entitled "Limitation of Cost."

(c) In addition, where Federal financial assistance is involved in the contract effort, the following clause will apply:

Reports to the Indian People

The contractor, as a recipient of Federal financial assistance, shall make reports and information available to the Indian people served or represented by the contractor. Such reports will reflect how the Federal assistance funds were utilized to the benefit of the Indian people served or represented as follows: (specific reporting requirements, formats and methods of distribution to the Indian people will be prescribed in the scope of the contract.)

(d) *Annual Reporting.*

(1) For each fiscal year during which a tribal organization receives or expends funds pursuant to a contract under this Part, the tribe which requested the contract must submit a report to the Contracting Officer. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended and information on the conduct of the program or services involved. The reports shall include any other information requested by the Contracting Officer and may be submitted as follows:

(i) When the contract is with the governing body of an Indian tribe, the tribe shall submit the report to the Contracting Officer.

(ii) When the contract is with a tribal organization other than the governing body of the tribe, the tribe has the option of having the tribal organization prepare the report and submit it to the tribe for review and approval before the tribe submits it to the Contracting Officer.

(iii) When the contract benefits more than one tribe, the tribal organization shall prepare and submit the report to each of the tribes benefiting under the contract. Each tribe shall endorse the report before submitting it to the Contracting Officer.

(2) The annual report shall be submitted to the Contracting Officer within 90 days of the end of the fiscal year in which the con-

tract was performed. However, the period for submitting the report may be extended if there is just cause for such extension.

(3) In addition to the yearly reporting requirement given in paragraphs (a) and (b) of this section, the tribal contractor shall furnish other reports when and as required by the Secretary.

(End of clause)

Clause No. 10—Subcontracting (June 1977)

(a) *Prior approval required.* Except as provided in (c) below, the Contractor shall not enter into any subcontract or purchase order not otherwise expressly authorized elsewhere in this contract without the prior written approval of the Contracting Officer and subject to such conditions as the Contracting Officer may require.

(b) *Request for approval.* The Contractor's request for approval to enter into a subcontract pursuant to this clause shall include: (1) A description of the supplies or services to be called for by the subcontract; (2) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained; (3) the proposed subcontract price, together with the Contractor's cost or price analysis thereof; (4) identification of the type of subcontract to be used; (5) a copy or draft of the proposed subcontract, if available; and (6) any other information which the Contracting Officer may require.

(c) *Certain purchases of property and services.* Prior written approval shall not be required for firm fixed-price subcontracts for the purchase or rental of items of personal property having a unit acquisition cost of less than $200 or for subcontracts in a total amount less than $1,000 unless otherwise specified elsewhere in this contract: Provided, however, That advance notification shall be given by the Contractor of any subcontract which exceeds in dollar amount 5 percentum of the total estimated cost of this contract.

(d) *Contractor's procurement system.* The contractor shall use methods, practices or procedures in subcontracting or purchasing (hereinafter referred to as the Contractor's "procurement system") acceptable to the Contracting Officer. The Contracting Officer may, at any time during the performance of this contract, require the Contractor to provide information concerning its procurement system.

(e) *Effect of subcontracting.* Subcontracts shall be made in the name of the Contractor and shall not bind nor purport to bind the Government. The making of subcontracts hereunder shall not relieve the Contractor of any requirement under this contract (including, but not limited to, the duty to properly supervise and coordinate the work of subcontracts, and the duty to maintain and account for property pursuant to the clause of this contract entitled "Government Property"). Approval of the provisions of any subcontract by the Contracting Officer shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost. In no event shall approval of any subcontract by the Contracting Officer be construed as effecting any increase in the estimated cost set forth in this contract. No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(f) *Procurements from contractor-controlled sources.* Procurement or transfer of equipment, materials, supplies, or services from contractor-controlled source (any division or other organizational component of the prime contractor, exclusive of the contracting component, and any subsidiary or affiliate of the Contractor under a common control) shall be considered a subcontract for the purpose of this clause.

(End of clause)

Clause No. 11—Accounts, Audit and Records (June 1977)

(a) The Contractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitutes "records" for the purposes of this clause.

(b) The Contractor's facility(ies), or such part thereof as may be engaged in the performance of this contract, and its records shall be subject at all reasonable times to inspection and audit by the Contracting Officer or his/her authorized representative.

(c) The contractor shall preserve and make available its records (1) until the expiration of 3 years from the date of final payment under this contract, or the time periods for the particular records specified in (41 CFR Part 1-20), whichever expires earlier and (2) for such longer period, if any, as is required by applicable statute, or by other clause of this contract, or by (i) or (ii) below.

(i) If this contract is completely or partially retroceded or reassumed by the Government, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the "Disputes" clause of this contract, (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs and expenses of this contract to which exception has been taken by the Contracting Officer or any of his/her duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract hereunder that is not firm fixed-price or fixed-price with escalation. When so inserted, changes shall be made to designate the higher-tier subcontractor at this level involved in place of the Contractor: to add "of the Government prime contract" in place of "this contract" in (B) of subparagraph (c)(ii) above.

(End of clause)

CLAUSE NO. 12—GOVERNMENT PROPERTY (JUNE 1977)

(a) *Government furnished property.* (1) The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described elsewhere in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (such property to be referred to as "Government furnished property").

In the event that Government furnished property is not delivered to the contractor by the time or times as stated, or if not stated, in sufficient time to enable the Contractor to meet such delivery or performance dates under this contract, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and make appropriate equitable adjustments to any contractual provisions affected by any such delay in accordance with the provisions of the clause of this contract entitled "Changes."

In the event that Government furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, immediately upon receipt thereof, notify the Contracting Officer of such fact, and, as directed by the Contracting Officer either (i) return or otherwise dispose of such property, or (ii) effect repairs or modifications thereto. Upon completion of (i) or (ii) above, the Contracting Officer, upon timely written request of the Contractor, shall make appropriate equitable adjustments to any contractual provisions affected thereby in accordance with the provisions of the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Title.* (1) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property."

(2) Title to the Government property shall not be affected by the incorporation or attachment thereof to any property now owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity or personality by reason of affixation to any realty.

(c) *Use of Government property.* Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(d) *Property management and control.* The Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance repair, protection, and preservation, control of and accountability for Government property, so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall comply with Federal, State, and local laws, codes, ordinances, regulations, and orders pertaining to standards of construction, safety, environment quality, energy conservation, historic site preservation, facilities for the handicapped, emergency preparedness, and other requirements that are applicable to the physical characteristics, operation, and maintenance of Government property. The Contractor agrees to promptly receipt for all Government property in a form and manner as prescribed by the Contracting Officer. The

Contractor further agrees to take all reasonable steps to comply with all directions or instructions which the Contracting Officer may prescribe regarding the management and control of Government property.

(e) *Risk or loss.* (1) The Contractor shall not be liable for any loss of or damage to Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of

(A) all or substantially all of the Contractor's operations at any one plant, laboratory or separate location in which this contract is being performed or

(B) a separate and complete major organization, industrial or otherwise in connection with the performance of this contract;

(ii) Which results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (i) above, (A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by paragraph (d) hereof, or (B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (4) hereof;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; Provided That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) If the Contractor transfers Government property to the possession and control of a subcontractor the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to Government property as set forth in (1) above. The Contractor shall require the subcontractor to assume the risk of and be responsible for any loss or destruction of or damage to Government property while in the latter's possession or control, and the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received (except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract). Provided, however, That the subcontractor may be relieved from such liability only to the extent that the subcontract, with the prior approval of the Contracting Officer, so provides.

(3) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provisions for a reserve, covering the risk of loss or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(4) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovation of the damaged Government property, or take such other actions as the Contracting Officer directs.

(5) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The loss, destruction or damage and, upon the request of the Constracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the

subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(f) *Disposition of Government property.*

(1) During the period of performance of this contract, the Contractor shall promptly and regularly report to the Contracting Officer, in such form and manner as the Contracting Officer may direct, concerning the status of Government property under the contract, including all Government property in the Contractor's possession which is not in use or which is excess to the needs of the contract. The Contractor shall make such disposition of Government property as the Contracting Officer may direct. The Contractor shall in no way be relieved of responsibility for Government property without the prior written approval of the Contracting Officer.

(2) Upon completion or expiration of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all Government property which had come into the possession or custody of the Contractor under this contract. Such accounting shall include inventory schedules covering all items of Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, or for which the Contractor has not otherwise been relieved of responsibility. The Contractor shall deliver or make such other disposition of Government property covered in such inventory schedules as the Contracting Officer may direct.

(3) The net proceeds of any disposition of Government property, in accordance with (1) and (2) above, shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct.

(g) *Restoration of premises.* Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's facility or any portion thereof which is affected by removal of any Government property.

(End of clause)

Clause No. 13—Changes (June 1977)

The Contracting Officer may at any time, with the consent of the Contractor, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (a) Drawings, designs, or specifications; (b) method of shipment or packing; (c) place of inspection, delivery, or acceptance; and (d) the amount of Government furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of this contract, or otherwise affects any other provisions of this contract, whether changed or not by any such order, an equitable adjustment shall be made (a) in the estimated cost or delivery schedule, or both, and (b) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he/she decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

Clause No. 14—Notice to the Government of Delays (June 1977)

Whenever the Contractor has knowledge that any actual or potential situation, including, but not limited to, labor disputes, is delaying or threatens to delay the timely performance of the work under this contract, the Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(End of clause)

Clause No. 15—Retrocession (June 1977)

(a) The Indian Tribe that initially requested this contract may also request its retrocession, notwithstanding the fact that the Contractor may be a tribal organization other than the Tribe.

(b) Should the Tribe request retrocession of the contract and the Contractor is other than the Tribe, the Contracting Officer will notify the Contractor of the request and in consultation with the Tribe and the Contractor establish the effective date of the retrocession. The retrocession will become effective no later than 120 days after the Contracting Officer receives the Tribe's request unless the Tribe and the Contracting Officer mutually agree on a later date.

(c) Immediately after receipt of the request for retrocession and where applicable notifying the Contractor, the Contracting Officer will meet with the Contractor and, where applicable, the tribal governing body or bodies, mutually agree to:

(1) A plan for the orderly transfer of responsibilities;

(2) A plan for inventorying materials and supplies on hand;

(3) An accounting for funds, including but not limited to current and anticipated obligations;

(4) The cost of operation until retrocession; and,

(5) The identification of all records relating to the contract and the contracted function.

(End of clause)

CLAUSE NO. 16—ASSUMPTION AND REASSUMPTION OF CONTRACT PROGRAMS (JUNE 1977)

(a) When the Director or his/her delegate determines that the performance of a Contractor under these regulations involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons, or (2) gross negligence or the mismanagement in the handling or use of funds under the contract, he/she will, in writing, notify the contractor of such determinations and will request that the Contractor take such corrective action within such period of time as the Director or his/her delegate may prescribe.

(b) When the Director or his/her delegate determines that a Contractor has not taken corrective action (as prescribed by him/her under paragraph (a) of this section) to his/her satisfaction, he/she may, after the Contractor has been provided an opportunity for a hearing in accordance with paragraph (c) of this section, rescind the contract in whole or in part and, if he/she deems it appropriate, assume or resume control or operation of the program, activity, or service involved.

(c)(1) When the Director or his/her delegate has made a determination described in paragraph (b) of this section, he/she shall in writing notify the Contractor of such determination and of the Contractor's right to request a review of such determination and of the determination described in paragraph (a) of this section. Such notification by the Director or his/her delegate shall set forth the reasons for the determination in sufficient detail to enable the Contractor to respond and shall inform the Contractor of its right to a hearing on the record before a Contract Appeals Board described in paragraph (d) of this section. Upon the request of the Contractor for a hearing, the Board, established pursuant to paragraph (d) of this section shall in writing within 10 days of the establishment notify the Contractor of the time, place and date of the hearing which will be held not later than 45 days after the request for a hearing.

(2) Where the Director or his/her delegate determines that a Contractor's performance under a contract awarded under this subpart poses an immediate threat to the safety of any person, he/she may immediately rescind the contract in whole or in part and, if he/she deems it appropriate, assume or resume control or operation of the program, activity, or service involved. Upon such a decision he/she will immediately notify the Contractor of such action and the basis therefor; and offer the Contractor an opportunity for a hearing on the record before the Contract Appeals Board established pursuant to paragraph (d) of this section to be held within 10 days of each action.

(d)(1) The Contract Appeals Board shall be composed of 3 persons appointed by the Director, Indian Health Service. Such persons may not be selected from the immediate office of any person participating in the determination at issue. The Board shall afford the Contractor the right:

(i) To notice of the issues to be considered;

(ii) To be represented by counsel;

(iii) To present witnesses on Contractor's behalf;

(iv) To cross-examine other witnesses either orally or through written interrogatories; and

(v) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(2) The Contract Appeals Board shall make an initial written decision which shall become final within 20 days unless the Director, Indian Health Service or his/her representative modifies or reverses the decision. Any such decision by the Director of the Indian Health Service or his/her representative shall be in writing, shall be specific as to the reasons for such decision, and shall be considered final.

(3) Where the Board is considering issues arising under paragraph (2) of this section, the Board shall within 25 days after the conclusion of the hearing, notify all parties in writing of its decision.

(c) In any case where the officer has rescinded a contract under paragraph (b) or (c) of this section, he/she may decline to enter into a new contract agreement with the Contractor until such time as he/she is satisfied that the basis for the recision has been corrected.

Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(End of clause)

Clause No. 17—Key Personnel (June 1977)

Where "key personnel" have been identified in this contract, it has been determined that such named personnel are necessary for the successful performance of the work under this contract; and the Contractor agrees to assign such personnel to the performance of the work under this contract, and shall not reassign or remove any of them without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned personnel is unavailable for assignment for work under the contract, the Contractor shall immediately notify the Contracting Officer to that effect and shall, subject to the approval of the Contracting Officer without formal modification to the contract, replace such personnel with personnel of substantially equal ability and qualifications.

(End of clause)

Clause No. 18—Litigation and Claims (June 1977)

The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to, the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled "Allowable Cost," except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractor; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any cost resulting from the loss thereof to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

(End of clause)

Clause No. 19—Indemnity and Insurance (June 1977)

(a) The Contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claim, expense or liability whatsoever, because of accident or injury to persons or property or others occurring in connection with any program included as a part of this contract, by providing where applicable, the insurance described below:

(b) The Contractor shall secure, pay the premium for, and keep in force until the expiration of this contract, or any renewal period thereof, insurance as provided below. Such insurance policies shall specifically include a provision stating the liability assumed by the Contractor under this contract.

(1) Workman's compensation insurance as required by laws of the state.

(2) Owner's, landlord's, and tenant's bodily injury liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(3) Property damage liability insurance with limits of not less than $25,000 for each accident.

(4) Automobile bodily injury liability insurance with limits of not less than $50,000 for each person, and $500,000 for each accident and property damage liability insurance with a limit of not less than $5,000 for each accident.

(5) Food products liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(6) Professional malpractice insurance where medical, dental and other health professional services are involved.

(7) Other liability insurance not specifically mentioned when required.

(c) Each policy of insurance shall contain an endorsement providing that cancellation by the insurance company shall not be effective unless a copy of the cancellation is mailed (registered) to the Contracting Officer 30 days prior to the effective date of cancellation.

(d) A certificate of each policy of insurance, and any change therein, shall be furnished to the Contracting Officer immediately upon receipt from the insurance company.

(e) Insurance companies of the Contractor shall be satisfactory to the Contracting Officer. When in his/her opinion an insurance company is not satisfactory for reasons that will be stated, the Contractor shall provide insurance through companies that are satisfactory to the Contracting Officer.

(f) Each policy of insurance shall contain a provision that the insurance carrier waives any rights it may have to raise as a defense the tribe's sovereign immunity from suit, but such waivers shall extend only to claims the amount and nature of which are within the coverage and limits of the policy of insurance. The policy shall contain no provision, either expressed or implied, that will serve to authorize or empower the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy insurance.

(End of clause)

CLAUSE NO. 20—OVERTIME (JUNE 1977)

Except as provided in this contract, the Contractor shall not perform overtime work under or in connection with this contract for which premium compensation is required to be paid, without specific written approval from the Contracting Officer.

(End of clause)

CLAUSE NO. 21—FOREIGN TRAVEL (JUNE 1977)

Foreign travel shall not be performed without the prior written approval of the Contracting Officer. As used in this clause "Foreign Travel" means travel outside the United States, its Territories and Possessions, and Canada.

(End of clause)

CLAUSE NO. 22—QUESTIONNAIRE AND SURVEYS (JUNE 1977)

In the event the performance of this contract involves the collection of information upon identical items from 10 or more persons, other than Federal employees, the Contractor shall obtain written approval from the Contracting Officer, prior to the use thereof, of any forms, schedules, questionnaires, survey plans or other documents, and any revisions thereto, intended to be used in such collection.

(End of clause)

CLAUSE NO. 23—PRINTING (JUNE 1977)

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; Provided, however, That performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10 and ½ inches, one side only, one color.

(End of clause)

CLAUSE NO. 24—SERVICES OF CONSULTANTS (JUNE 1977)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled "Subcontracting," the prior written approval of the Contracting Officer shall be required:

(a) Whenever any employee of the Contractor is to be reimbursed as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, $100, exclusive of travel costs or where the services of any consultant under this contract will exceed 10 days in any calendar year. Whenever Contracting Officer approval is required, the Contractor will obtain and furnish to the Contracting Officer information concerning the need for such consultant services and the reasonableness of the fees to be paid, including but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consultant services of a similar nature.

(End of clause)

CLAUSE NO. 25—ASSIGNMENT OF CLAIMS (JUNE 1977)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payment to assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

(End of clause)

Clause No. 26—Contract Work Hours and Safety Standard Act—Overtime Compensation (June 1977)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he/she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his/her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) *Subcontracts.* The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts for any tier.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract. This requirement does not apply where the tribal contractor is the governing body of the tribe and the work is being performed by the tribal contractor or the tribe with its regular employees.

(End of clause)

Clause No. 27—Walsh-Healey Public Contracts Act (June 1977)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect. This requirement does not apply where the tribal contractor is the governing body of the tribe and the work is being performed by the tribal contractor or the tribe with its regular employees.

(End of clause)

Clause No. 28—Equal Opportunity (June 1977)

Subject to the Indian preference in training and employment of Clause 29 during the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(End of clause)

Clause No. 29—Indian Preference in Training and Employment (June 1977)

(a) The Contractor shall give preference in employment for all work performed under the contract, including subcontracts thereunder, to qualified Indians regardless of age, religion, or sex, and to the extent feasible consistent with the efficient performance of the contract, provide employment and training opportunities to Indians, regardless of age, religion, or sex, that are not fully qualified to perform under the contract. The Contractor shall comply with any Indian preference requirements established by the Tribe receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(b) If the Contractor or any of its subcontractors is unable to fill its employment openings after giving full consideration to Indians as required in paragraph (a) above, these employment openings may then be filled by other than Indians under the conditions set forth in the Equal Opportunity clause of this contract.

(c) The Contractor agrees to include this clause or one similar thereto in all subcontracts issued under the contract.

(End of clause)

Clause No. 30—Certificate of Nonsegregated Facilities (June 1977)

By signing the contract the Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms, and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom or otherwise. It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities. A certificate of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

(End of clause)

Clause No. 31—Convict Labor (June 1977)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor, except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)), and Executive Order No. 11755, December 29, 1973.

(End of clause)

Clause No. 32—Officials Not To Benefit (June 1977)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

(End of clause)

Clause No. 33—Buy American Act for Supply and Service Contracts (June 1977)

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies which are to be acquired under this contract for public use; and

(iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purpose of this (a)(iii) (B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) As to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954).

(End of clause)

Clause No. 34—Anti-Kickback Act (June 1977)

(a) Public Law 86-695, September 2, 1960 (41 U.S.C. 51-54) among other things prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, gift or gratuity to the prime contractor or any higher tier subcontractor or any officer, agent, partner or employee thereof, as an inducement or acknowledgment for the award of a subcontact or order.

(b) The provisions of Public Law 86-695 are applicable to this contract and any subcontracts entered into under the contract.

(End of clause)

Clause No. 35—Use of Indian Business Concerns (June 1977)

(a) As used in this clause, the term "Indian business concern" means Indian organizations or an Indian-owned economic enterprise as defined in 42 FR 36.204(i).

(b) The contractor agrees to give preference to qualified Indian business concerns in the awarding of any subcontracts entered into under the contract consistent with the efficient performance of the contract. The contractor shall comply with any preference requirements regarding Indian business concerns established by the Tribe(s) receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(c) If no Indian business concerns are available under the conditions in paragraph (b) above, the Contractor agrees to accomplish the maximum amount of subcontracting, as the Contractor determines is consistent with its efficient performance of the contract, with small business concerns, labor surplus area concerns or minority business enterprises, the definitions for which are contained in Subparts 1-1.7, 1-1.8, and 1-1.13 of the Federal Procurement Regulations. The Contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program as described in sections 1-1.710-3(b), 1-1.805-3(b), and 1-1.1310-2(b), respectively, of the Federal Procurement Regulations (41 CFR Chaper 1).

(End of clause)

Clause No. 36—Payment of Interest on Contractor's Claims (June 1977)

(a) If an appeal is filed by the Contractor from a final decision of the Contracting Officer under the Disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to P.L. 92-41, 85 Stat. 97, from the date the Contractor furnished to the Contracting Officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a), above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeals, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing its remedies before a board of contract appeals or a court of competent jurisdiction.

The Contractor further agrees to comply with any rules, regulations and reporting requirements which may be imposed by the HHS Office for Civil Rights for purposes of insuring the proper exercise of this authority. The Contractor agrees to insert this clause in all subcontract(s) under this contract.

(End of clause)

Clause No. 37—Fair and Equal Treatment of Indian People (June 1977)

(a) The Contractor agrees consistent with medical needs to make no discriminatory distinctions among Indian patients or beneficiaries of this contract. For the purpose of this contract discriminatory distinctions include but are not limited to the following:

(i) denying a patient any service or benefit or availability of a facility;

(ii) providing any service or benefit to a patient which is different, or is provided in a different manner or at a different time from that provided to other patients under this contract; subjecting a patient to segregation or separate treatment in any manner related to his/her receipt of any service; restricting a patient in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a patient differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility membership, or other requirements of condition which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of discriminatory distinctions which may be made of the patients to be served.

(b) The Government reserves the right to reassume this contract in whole or in part whenever the Contractor fails to comply with the requirements of this clause.

(End of clause)

CLAUSE NO. 38--PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

The following clause applies to all contracts where cost and pricing data is required in accordance with P.L. 87-653.

Price Reduction for Defective Cost or Pricing Data (June 1977)

(a) If the Contracting Officer determines that any price negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the Contractor, or any subcontractor pursuant to the Clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data-Price Adjustments," or any subcontract clause therein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in its Contractor's Certificate of Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(NOTE: Since this contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower tier subcontractors.)

(End of clause)

CLAUSE NO. 39—SUBCONTRACTOR COST AND PRICING DATA

The following clauses should be included in all contracts, when the subcontracts of the type and size described therein are contemplated.

Subcontractor Cost and Pricing Data (June 1977)

(a) The Contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursed type, time and material, labor-hour, incentive, or price redeterminable subcontract the price of which is expected to exceed $100,000; and

(2) Prior to the award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification of which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market price or commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, substantially the same form as that used in the certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (a) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each of its cost-reimbursement type, time and material, labor-hour, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceeds $100,000 unless the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such expected subcontract hereunder which exceeds $100,000, the Contractor shall insert the substance of the following clauses:

Subcontractor Cost and Pricing Data—Price Adjustments

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, time and material, labor-hour,

incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and

(2) Prior to award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

(End of clause)

Clause No. 40—Penalties (June 1977)

(a) Any officer, director, agent, employee or such other person connected in any capacity with this contract or any subcontract thereunder that embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through the contract shall be fined not more than $10,000 or imprisoned for more than two years, or both; Provided, That if the amount embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) The Contractor agrees to insert the clause in all subcontracts.

(End of clause)

Clause No. 41—Effect on Existing Rights (June 1977)

(a) Nothing in this contract shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity for suit enjoyed by an Indian tribe; or,

(2) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

(End of clause)

Clause No. 42—General Services Administration (GSA) Supply Sources

Indian tribal organizations which are awarded cost-reimbursement type contracts under the Indian Self-Determination Act, may be authorized to utilize GSA supply sources. The following clause will be inserted in all cost-reimbursement type contracts under which the Contractor may be authorized to acquire items for the account of the Government from GSA supply sources:

General Services Administration Supply Sources (June 1977)

The Contracting Officer may issue the Contractor an authorization to utilize General Services Administration supply sources for property to be used in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government, (1) unless otherwise specifically provided in the contract, (2) unless otherwise provided in the Government Property clause of this contract, or (3) in the absence of both the conditions in (1) and (2) of the clause. However, such property shall not be considered to be "Government-furnished property."

(End of clause)

(b) Insert the following clauses in fixed price contracts awarded under the Indian Self-Determination Act as described in Subpart PHS 380.4:

Clause No. 1—Definitions (June 1977)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health and Human Services and the term "his/her duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his/her authority.

(c) The term "Department" means the Department of Health and Human Services (HHS).

(d) The term "constituent agency" means the agency of the Department responsible for the administration of this contract.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

(f) The term "Project Officer" means the person representing the Government for the purpose of technical direction of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the period of this contract.

(End of clause)

CLAUSE NO. 2—DISPUTES (JUNE 1977)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his/her duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(End of clause)

CLAUSE NO. 3—CONTRACT WORK HOURS AND SAFETY STANDARD ACT—OVERTIME COMPENSATION (JUNE 1977)

This contract, to the extent it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), is subject to the following provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he/she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standard Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater numbers of overtime hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his/her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) at the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) *Subcontracts.* The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract. This requirement does not apply where the tribal contractor is the governing body of the Tribe and the work is being performed by the tribal organization or Tribe with its own regular employees.

(End of Clause)

Clause No. 4—Walsh-Healey Public Contracts Act (June 1977)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 34-45), there are hereby incorporated by reference all representations and stipulations required by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect. This requirement does not apply where the tribal contractor is the governing body of the Tribe and the work is being performed by the tribal organization or Tribe with its own regular employees.

(End of Clause)

Clause No. 5—Convict Labor (June 1977)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2) and Executive Order No. 11755, December 29, 1973.

(End of clause)

Clause No. 6—Notice to the Government of Delays (June 1977)

Whenever the Contractor has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, the Contractor shall within ten days give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(End of clause)

Clause No. 7—Assignment of Claims (June 1977)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payment aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract payments to assignee of any moneys due or due to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41).

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed to such assignee upon the prior written authorization of the Contracting Officer.

(End of clause)

Clause No. 8—Officials Not To Benefit (June 1977)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

(End of clause)

Clause No. 9—Anti-Kickback Act (June 1977)

(a) Public Law 86-695, September 2, 1960 (41 U.S.C. 51-54) among other things, prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, gift, or gratuity to the prime contractor or any officer, agent, partner or employee thereof, as an inducement or acknowledgement for the award of a subcontract or order.

(b) The provisions of Public Law 86-695 are applicable this contract and any subcontracts entered into under the contract.

(End of clause)

CLAUSE NO. 10—PENALTIES (JUNE 1977)

Any officer, director, agent, employee or such other person connected in any capacity with this contract or any subcontract thereunder that embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through the contract shall be fined not more than $10,000 or imprisoned for not more than two years, or both; Provided, That if the amount embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) The Contractor agrees to insert this clause in all subcontracts.

(End of clause)

CLAUSE NO. 11—BUY AMERICAN ACT (JUNE 1977)

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) "A domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the the public interest; or

(iv) As to which the Secretary determines the cost to the Government to be unreasonable. (The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954).

(End of clause)

CLAUSE NO. 12—EQUAL OPPORTUNITY (JUNE 1977)

Subject to the Indian preference requirements of Clause 17, during the performance of this contract the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of Sepember 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Contrator will furnish all information and reports required by executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(End of clause)

Clause No. 13—Certificate of Nonsegregated Facilities (June 1977)

By signing the contract the Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "Segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. It futher agrees that (except where it has obtained identical certification from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities. A certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or all subcontracts during a period (i.e., quarterly, semiannually, or annually).

(End of clause)

Clause No. 14—Subcontracting (June 1977)

The Contractor shall not enter into subcontracts for any of the work contemplated under this contract without obtaining the prior written approval of the Contracting Officer and subject to such conditions and provisions as he/she may deem necessary, in his/her discretion, to protect the interests of the Government: Provided, however, That notwithstanding the foregoing, unless otherwise provided herein, such prior written approval shall not be required for the purchase by the Contractor of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the requirements under this contract; Provided, further, however, That the aforesaid right of Contractor to engage such services shall in no event be construed to permit the Contractor to subcontract with a third-party for the performance of any major function contemplated under this contract to be performed by the Contractor, and Provided, further, however, That no provision of this clause and no such approval by the Contracting Officer of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the Government in addition to the total contract price.

(End of clause)

Clause No. 15—Competition in Subcontracting (June 1977)

The Contractor agrees to select subcontractors on a competitive basis to the maximum practical consistent with the objectives and requirements of this contract.

(End of clause)

CLAUSE NO. 16—USE OF INDIAN BUSINESS CONCERNS (JUNE 1977)

(a) As used in this clause, the term, "Indian business concern" means Indian organizations or an Indian-owned economic enterprise as defined in 42 CFR 36.204(i).

(b) The Contractor agrees to give preference to qualified Indian business concerns in the awarding of any subcontracts entered into under the contract consistent with efficient performance of the contract. The Contractor shall comply with any preference requirements regarding Indian business concerns established by the tribe(s) receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(c) If no Indian business concerns are available under the conditions in paragraph (b) above, the Contractor agrees to accomplish the maximum amount of subcontracting, as the Contractor determines is consistent with its efficient performance of the contract, with small business concerns, labor surplus area concerns or minority business enterprises, the definitions for which are contained in Subparts 1-1.7, 1-1.8, and 1-1.13 of the Federal Procurement Regulations. The Contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program as described in sections 1-1.710-3(b), 1-1.805-3(b), and 1-1.1310-2(b), respectively of the Federal Procurement Regulations (41 CFR Chapter 1).

(End of clause)

CLAUSE NO. 17—INDIAN PREFERENCE IN TRAINING AND EMPLOYMENT (JUNE 1977)

(a) The Contractor shall give preference in employment for all work performed under the contract, including subcontracts thereunder, to qualified Indians regardless of age, religion, or sex, and to the extent feasible consistent with the efficient performance of the contract, provide employment and training opportunities to Indians, regardless of age, religion, or sex, that are not fully qualified to perform under the contract. The Contractor shall comply with any Indian preference requirements established by the tribe receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(b) If the Contractor or any of its subcontractors is unable to fill its employment openings after giving full consideration to Indians as required in paragraph (a) above, these employment openings may then be filled by other than Indians under the conditions set forth in the Equal Opportunity clause of this contract.

(c) The Contractor agrees to include this clause or one similar thereto in all subcontracts issued under this contract.

(End of clause)

CLAUSE NO. 18—INSPECTION (JUNE 1977)

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(End of clause)

CLAUSE NO. 19—CHANGES (JUNE 1977)

The Contracting Officer may at any time, with the consent of the Contractor, by a written order and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following (i) drawings, designs, or specifications, (ii) place of inspection, delivery, or acceptance, and (iii) the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; Provided, however, That the Contracting Officer, if he/she decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

Clause No. 20—Retrocession (June 1977)

(a) The Indian tribe that initially requested this contract may also request its retrocession, notwithstanding the fact that the Contractor may be a tribal organization other than the Tribe.

(b) Should the Tribe request retrocession of the contract and the Contractor is other than the Tribe, the Contracting Officer will notify the Contractor of the request and in consultation with the Tribe and the Contractor establish the effective date of the retrocession. The retrocession will become effective no later than 120 days after the Contracting Officer receives the Tribe's request unless the Tribe and the Contracting Officer mutually agree on a later date.

(c) Immediately after receipt of the request for retrocession and where applicable notifying the Contractor, the Contracting Officer will meet with the Contractor and, where applicable, the tribal governing body or bodies mutually agree to:

(1) A plan for the orderly transfer of responsibilities;

(2) A plan for inventorying materials and supplies on hand;

(3) An accounting for funds, including but not limited to current and anticipated obligations;

(4) The cost of operation until retrocession; and,

(5) The identification of all records relating to the contract and the contracted function.

(End of clause)

Clause No. 21—Assumption and Reassumption of Contract Programs (June 1977)

(a) When the Contracting Officer determines that the performance of a Contractor under these regulations involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any person, or (2) gross negligence or the mismanagement in the handling or use of funds under the contract, the Contracting Officer will, in writing, notify the Contractor of such determination and will request that the Contractor take such corrective action within such period of time as the Secretary may prescribe.

(b) When the Director or his/her delegate determines that a Contractor has not taken corrective action (as prescribed by him/her under paragraph (a) of this section) to his/her satisfaction, he/she may, after the Contractor has been provided an opportunity for a hearing in accordance with paragraph (c) of this section, rescind the contract in whole or in part and, if he/she deems it appropriate, assume or resume control or operation of the program, activity, or service involved.

(c)(1) When the Director or his/her delegate has made a determination described in paragraph (b) of this section, he/she shall in writing notify the Contractor of such determination and of the Contractor's right to request a review of such determination and of the determination described in paragraph (a) of this section. Such notification by the Director or his/her delegate shall set forth the reasons for the determination in sufficient detail to enable the Contractor to respond and shall inform the Contractor of its rights to a hearing on the record before a Contract Appeals Board described in paragraph (d) of this section. Upon the request of the Contractor for a hearing, the Board, established pursuant to paragraph (d) of this section, shall in writing within 10 days of the establishment notify the Contractor of the time, place and date of the hearing which will be held not later than 45 days after the request for a hearing.

(2) Where the Director or his/her delegate determines that a Contractor's performance under a contract awarded under this subpart poses an immediate threat to the safety of any person, he/she may immediately rescind the contract in whole or in part and, if he/she deems it appropriate, assume or resume control or operation of the program, activity, or service involved. Upon such a decision he/she will immediately notify the Contractor of such action and the basis therefor; and offer the Contractor an opportunity for a hearing on the record before the Contract Appeals Board established pursuant to paragraph (d) of this section to be held within 10 days of each action.

(d)(1) The Contract Appeals Board shall be composed of 3 persons appointed by the Director, Indian Health Service. Such persons may not be selected from the immediate office of any person participating in the determinations at issue. The Board shall afford the Contractor the right:

(i) To notice of the issues to be considered;

(ii) To be represented by counsel;

(iii) To present witnesses on contractor's behalf;

(iv) To cross-examine other witnesses either orally or through written interrogation; and

(v) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(2) The Contract Appeals Board shall make an initial written decision which shall become final within 20 days unless the Director, Indian Health Service or his/her representative modifies or reverses the decision. Any such decision by the Director of

the Indian Health Service or his/her representative shall be in writing, shall be specific as to the reasons for such decision, and shall be considered final.

(3) Where Board is considering issues arising under paragraph (2) of this section, the Board shall within 25 days after the conclusion of the hearing, notify all parties in writing of its decision.

(e) In any case where the officer has rescinded a contract under paragraphs (b) or (c) of this section, he/she may decline to enter into a new contract agreement with the Contractor until such time as he/she is satisfied that the basis for the rescission has been corrected.

Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(End of clause)

CLAUSE NO. 22—PAYMENT OF INTEREST ON CONTRACTORS' CLAIMS (JUNE 1977)

(a) If an appeal is filed by the Contractor from a final decision of the Contracting Officer under the Disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, from the date the Contractor furnished to the Contracting Officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a), above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing its remedies before a board of contract appeals or a court of competent jurisdiction.

(End of clause)

CLAUSE NO. 23—GOVERNMENT-FURNISHED PROPERTY (JUNE 1977)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described elsewhere in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-Furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-Furnished Property suitable for use will be delivered to the Contractor at the times stated elsewhere in this contract or, if not so stated, in sufficient time to enable the Contractor by such time or times, to meet such delivery or performance dates. In the event that Government-Furnished Property is not delivered to the Contractor to meet such delivery or performance dates, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the delivery or performance dates, or the contract price, or both, and any other contractual provision affected by the delay. In the event that Government-Furnished Property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of such property, or (2) effect repairs or modifications. Upon completion of (1) or (2) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates of the contract price, or both, and any other contractual provision effected by the return, disposition, repair, or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-Furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance date or the contract price, or both, and any other contractual provisions affected by the decrease.

(c) Title to the Government-Furnished Property shall remain in the Government. Title to Government-Furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-Furnished Property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(d) The Government-Furnished Property, unless otherwise specifically provided herein, and except as otherwise approved or directed by the Contracting Officer in writing, shall be used exclusively for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection and preservation of Government-Furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-Furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property, as the Government directs; Provided, however, That if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible; and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-Furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

(f) The Contractor also agrees to maintain and administer, in accordance with sound business practice, a property control system which will provide the following: Contract number; nomenclature of item; quantity received; issued; and balance on hand; posting reference to include date received, issued unit price and location; marking or identification of item; adequate maintenance, storage, and security of Government-Furnished Property, until disposed of by the Contractor in accordance with this clause. The Contractor further agrees to receipt promptly for all Government property in a form and manner as prescribed by the Contracting Officer.

(g) The Contractor agrees to make available to authorized representatives of the Contracting Officer at all reasonable times at the office of the Contractor all of its property records under this contract, and access to any premises where any of the Government-Furnished Property is located.

(h) (i) The Contractor shall not be liable for any loss or damage to the Government-Furnished Property, or for expenses incidental to such loss or damage except that the Contractor shall be liable for any such loss or damage (including expenses incidental thereto):

(A) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed; or

(B) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of Government-Furnished Property as required by subparagraph (e) above; or

(C) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in this contract; or

(D) Which results from a risk expressly required to be insured under some other provision of this contract, or of the schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater; or

(E) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed but only to the extent of such insurance or reimbursement; Provided, That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(ii) The Contractor represents that it is not including the price hereunder, and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government-Furnished Property, except the extent that the risk of loss is imposed on the Contractor under (i)(C) above, or insurance has been required under (i)(D) above.

(iii) Upon the happening of loss or destruction of or damage to any Government-Furnished Property, the Contractor shall notify the Contracting Officer thereof and shall take all reasonable steps to protect the Government-Furnished Property from further damage, separate the damaged and undamaged Government-Furnished Property in the best possible order, and furnish to the Contracting Officer a statement of:

(A) The lost, destroyed and damaged Government-Furnished Property;

(B) The time and origin of the loss, destruction or damage;

(C) All known interest in commingled property of which the Government-Furnished Property is a part; and

(D) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under the subparagraph (iii), to the extent approved by the Contracting Officer and set forth in a supplemental agreement or amendment to this contract.

(iv) With the prior written approval of the Contracting Officer after loss or destruction of or damage to Government-Furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-Furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of other, including the Contractor, that separation is impracticable.

(v) Except to the extent of any loss or destruction of or damage to Government-Furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-Furnished Property in accordance with the provisions of this contract, the Government-Furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(vi) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-Furnished Property, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(i) Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract or which has not been previously disposed of in accordance with the provisions of this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of as the Contracting Officer may direct. The Contractor shall in no way be relieved of responsibility for Government property without the prior written approval of the Contracting Officer.

(j) If the Contracting Officer determines that the interests of the Government require removal of any Government-Furnished Property, or if the Contractor determines any Government-Furnished Property to be in excess of its need under this contract such Government-Furnished Property shall be disposed of in the same manner as covered by paragraph (i) above. In the event that the Contracting Officer requires the removal of any Government-Furnished Property under this paragraph (j) or paragraph (i) above, upon timely written request of the Contractor, an equitable adjustment shall be made in the contract price to cover the direct cost to the Contractor of such removal and of any property damage occasioned thereby.

(End of clause)

CLAUSE NO. 24—EXAMINATION OF RECORDS BY THE COMPTROLLER GENERAL (JUNE 1977)

(a) The Contractor agrees that the Comptroller General of the United States or any of his/her duly authorized representatives shall, until expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his/her duly authorized representatives shall, until expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of clause)

CLAUSE NO. 25—INDEMNITY AND INSURANCE (JUNE 1977)

(a) The Contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claim, expense or liability whatsoever, because of accident or injury to persons or property or others occurring in connection with any program including as a part of this contract, by providing where applicable, the insurance described below:

(b) The Contractor shall secure, pay the premium for, and keep in force until the expiration of this contract, or any renewal period thereof, insurance as provided below. Such insurance policies shall specifically include a provision stating the liability assumed by the Contractor under this contract.

(1) Workman's compensation insurance as required by laws of the state.

(2) Owner's, landlord's, and tenant's bodily injury liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(3) Property damage liability insurance with limits of not less than $25,000 for each accident.

(4) Automobile bodily injury liability insurance with limits of not less than $50,000 for each person, and $500,000 for each accident and property damage liability insurance with a limit of not less than $5,000 for each accident.

(5) Food products liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(6) Professional malpractice insurance where medical, dental, or other health professional services are involved.

(7) Other liability insurance not specifically mentioned when required.

(c) Each policy of insurance shall contain an endorsement providing that cancellation by the insurance company shall not be effective unless a copy of the cancellation is mailed (registered) to the Contracting Officer 30 days prior to the effective date of cancellation.

(d) A certificate of each policy of insurance, and any change therein, shall be furnished to the Contracting Officer immediately upon receipt from the insurance company.

(e) Insurance companies of the Contractor shall be satisfactory to the Contracting Officer. When in his/her opinion an insurance company is not satisfactory for reasons that will be stated, the Contractor shall provide insurance through companies that are satisfactory to the Contracting Officer.

(f) Each policy of insurance shall contain a provision that the insurance carrier waives any rights it may have to raise as a defense the tribe's sovereign immunity from suit, but such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy of insurance. The policy shall contain no provision, either expressed or implied, that will serve to authorize or empower the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy or insurance.

(End of clause)

Clause No. 26—Fair and Equal Treatment of Indian People (June 1977)

(a) The Contractor agrees to make no discriminatory distinctions among Indian patients or beneficiaries of this contract. For the purpose of this contract discriminatory distinctions include but are not limited to the following:

(i) Denying a patient any service or benefit or availability of a facility;

(ii) Providing any service or benefit to a patient which is different, or is provided in a different manner or at a different time from that provided to other patients under this contract; subjecting a patient to segregation or separate treatment in any manner related to his/her receipt of any service; restricting a patient in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a patient differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility membership, or other requirements or conditions which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of discriminatory distinctions which may be made of the patients to be served.

(b) The Government reserves the right to terminate this contract in whole or in part whenever the Contractor fails to comply with the requirements of this clause.

(End of clause)

Clause No. 27—Reports to the Indian People and Annual Reports (June 1977)

(a) The Contractor, as a recipient of Federal financial assistance, shall make reports and information available to the Indian people serviced or represented by the Contractor. Such reports will reflect how the Federal assistance funds were utilized to the benefit of the Indian people served or represented as follows: (specific reporting requirements, formats and methods of distribution to the Indian people will be prescribed in the scope of the contract.)

(b) *Annual reports.*

(1) For each fiscal year during which a tribal organization receives or expends funds pursuant to the contract under this Part, the tribe which requested the contract must submit a report to the Contracting Officer. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds

were expended and information on the conduct of the program or services involved. The report shall include any other information requested by the Contracting Officer and may be submitted as follows:

(i) When the contract is with the governing body of an Indian tribe, the tribe shall submit the reports to the Contracting Officer.

(ii) When the contract is with a tribal organization other than the governing body of the tribe, the tribe has the option of having the tribal organization prepare the report and submit it to the tribe for review and approval before the tribe submits it to the Contracting Officer.

(iii) When the contract benefits more than one tribe, the tribal organization shall prepare and submit the report to each of the tribes benefiting under the contract. Each tribe shall endorse the report before submitting it to the Contracting Officer.

(2) The annual report shall be submitted to the Contracting Officer within 90 days of the end of the fiscal year in which the contract was performed. However, the period for submitting the report may be extended if there is just cause for such extension.

(3) In addition to the yearly reporting requirement given in paragraphs (a) and (b) of this section, the tribal contractor shall furnish other reports when and as required by the Secretary.

(End of clause)

CLAUSE NO. 28—QUESTIONNAIRES AND SURVEYS (JUNE 1977)

In the event the performance of this contract involves the collection of information upon identical items from 10 or more persons, other than Federal employees, the Contractor shall obtain written approval from the Contracting Officer, prior to the use thereof, of any forms, schedules, questionnaires, survey plans or other documents, and any revisions thereto, intended to be used in such collection.

(End of clause)

CLAUSE NO. 29—PRINTING (JUNE 1977)

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: Provided, however, That performance of a requirement under this contract involvingthe reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10 and ½ inches, one side only, one color.

(End of clause)

CLAUSE NO. 30—PRICE REDUCTION FOR DEFECTIVE COST OR PRICING

The following clause applies to all contracts where cost and pricing data is required in accordance with P.L. 87-653.

Price Reduction for Defective Cost or Pricing Data (June 1977)

(a) If the Contracting Officer determines that any price negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the Contractor, or any subcontractor pursuant to the clause of this contract entitled "Subcontractor Cost, or Pricing Data" or "Subcontractor Cost or Pricing Data—Price Adjustments," or any subcontract clause therein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in its Contractor's Certificate of Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(NOTE: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower tier subcontractors).

(End of clause)

CLAUSE NO. 31—SUBCONTRACTOR COST AND PRICING DATA

The following clause should be included in all contracts when the subcontracts of the type and size described therein are contemplated.

Subcontractor Cost and Pricing Data (June 1977)

(a) The Contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursed type, time and material, labor-hour, incen-

tive, or price redeterminable subcontract the price of which is expected to exceed $100,000; and

(2) Prior to the award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, substantially the same form as that used in the certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (a) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The contractor shall insert the substance of this clause including this paragraph (c) in each of its cost-reimbursement type, time and material, labor-hour, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceeds $100,000 unless the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder which exceeds $100,000, the Contractor shall insert the substance of the following clause:

Subcontractor Cost and Pricing Data—Price Adjustment

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, time and material, labor hour, incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and

(2) Prior to award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

(End of clause)

CLAUSE NO. 32—ADVANCE PAYMENT (JUNE 1977)

(a) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (1) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (k)(4) hereof) as with all advance payments theretofore made, shall exceed the amount stated in paragraph (k)(1) hereof; and (3) without a properly certified invoice or invoices.

(b) *Special Bank Account.* Until all advance payments made hereunder are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor, and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (k)(2) hereof. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer or such other person or persons as he/she may designate in writing (hereinafter called the "Countersigning Agent"). Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(c) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purpose of making payments for items of allowable cost or to reimburse the Contractor for such items of allowable cost, and or such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(d) *Return of Funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advance previously made and liquidated) in excess of the amount specified in paragraph (k)(1) hereof. In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments are equal to the total estimated cost for the work under this contract or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate (including, without limitation, reimbursable costs incident to termination for cause and retrocession as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments until such advance payments shall have been fully liquidated. If upon completion, termination, or retrocession of the contract all advance payments have not been fully liquidated, the balances therefor shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the government upon demand.

(f) *Bank Agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation Act of August 23, 1935, 49 Stat. 685, as amended (12 U.S.C. 264).

(g) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other items, which lien shall secure the repayment or any advance payments made hereunder.

(h) *Lien on Property under Contract.* Any and all advance payments made under this contract shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on its books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(i) *Insurance.* The Contractor represents and warrants that it is now maintaining with responsible insurance carriers, (1) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by other operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, it will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to its insurance as the Administering Office may from time to time require.

(j) *Prohibition against Assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(k) *Designations and Determinations.* (1) *Amount.* The amount of advance payments at any time outstanding hereunder shall not exceed $——.

(2) *Depository.* The bank designated for the deposit of payments made hereunder shall be:

(3) *Interest Charge.* No interest shall be charged for advance payments made hereunder. The Contractor shall charge interest at the rate of 6 percent per annum on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

(4) *Administering Office.* The office administering advance payments shall be the office designated as having responsibility for awarding the contract.

(l) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the administering office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the administering office, to the extent that such additional security is available.

(End of clause)

CLAUSE NO. 33—EFFECT ON EXISTING RIGHTS (JUNE 1977)

(a) Nothing in this contract shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity for suit enjoyed by an Indian tribe; or

(2) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

(End of clause)

CLAUSE NO. 34—FEDERAL, STATE, AND LOCAL TAXES (JUNE 1977)

(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and (1) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase; Provided, That the Contractor if requested by the Contracting Officer, warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(2) Results in the Contractor not being required to pay or bear the burden of, or in its obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or the amount shall be paid to the Government, as directed by the Contracting Officer. The contract price shall be similarly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain, a refund or drawback of, any such Federal excise tax or duty.

(c) No adjustment pursuant to paragraph (b) above will be made under this contract unless the aggregate amount thereof is or may reasonably be expected to be over $100.

(d) As used in paragraph (b) above, the term "contract date" means the date set for the bid opening, or if this is a negotiated contract, the date of this contract. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government, upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the direction of the Contracting Officer.

(f) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the Contracting Officer.

(End of clause)

[49 FR 36242, Sept. 14, 1984, as amended at 51 FR 20491, June 5, 1986]

PHS 352.280-6 Demurrage charge provisions for reusable cylinders and containers.

The clause set forth below shall be inserted in solicitations and resultant contracts when delivery of the items may be in contractor-furnished reusable gas cylinders or other containers.

DEMURRAGE CHARGE PROVISIONS FOR REUSABLE CYLINDERS AND CONTAINERS (APR 1984)

(a) Reusable gas cylinders or other containers identified below by offereors shall remain the property of the Contractor (except as provided in (c) below), and will be loaned without charge to the Government for the period stipulated below. In computing the period involved, such free loan period shall commence on the first day after date of delivery of each container to the herein specified f.o.b. point(s). Offerors who specify less than ——— days (to be determined by the Contracting Officer in accordance with trade custom), shall have their offers increased for evaluation purposes only by an amount arrived at by multiplying the number of days less than the established free loan period by the daily rental charge. In the event the offeror does not specify a free loan period, such period shall be ——— days (insert the same number of days as the established free loan period). Beginning with the first day after expiration of the free loan period to and including the date the containers are delivered to the Contractor's designated carrier, the Government shall pay the Contractor demurrage (rental) in the amount specified below. No demurrage shall accrue to the Contractor in excess of the herein specified container's replacement value. For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the herein specified replacement value less allocable demurrage paid therefor. Such lost or damaged containers paid for by the Government shall become the property of the Government.

(b) Empty containers will be delivered to the Contractor's designated carrier (offeror to identify applicable carrier below) f.o.b. points of original delivery specified in this solicitation/contract.

OFFERORS SHALL FURNISH THE FOLLOWING INFORMATION, AS APPLICABLE, FOR CONTAINERS

Applicable item No.	Type and size of container	Quantity	Free loan period	Demurrage charges per day per cylinder

Replacement value for each container	Identification and location of offeror's carrier for return of empty container

(c) When the offeror indicates that containers have a replacement value of less than $10, the Government shall have the option to purchase containers and add the cost to the offered price. When purchase option is exercised, offers shall be evaluated accordingly. In this event, the container shall become the property of the Government.

(End of clause)

Subpart PHS 352.3—Provision and Clause Matrices

PHS 352.380-4 Contract clauses for contracts awarded under the Indian Self-Determination Act.

(a) PHS Acquisition Regulations (PHSAR) Clauses for Cost-Reimbursement Contracts Awarded under the Indian Self-Determination Act.

Number, PHSAR Clause No., and Title and Date of Clause

1. 352.280-4(a)(1) Definitions. (June 1977)
2. 352.280-4(a)(2) Disputes. (June 1977)
3. 352.280-4(a)(3) Limitation of Cost. (June 1977)
4. 352.280-4(a)(4) Allowable Cost. (June 1977)
5. 352.280-4(a)(5) Negotiated Overhead Rates. (June 1977)
6. 352.280-4(a)(6) Payment (June 1977)
7. 352.280-4(a)(7) Advance Payment. (June 1977)
8. 352.280-4(a)(8) Examination of Records. (June 1977)
9. 352.280-4(a)(9) Inspection and Reports. (June 1977)
10. 352.280-4(a)(10) Subcontracting. (June 1977)
11. 352.280-4(a)(11) Accounts, Audit, and Records. (June 1977)
12. 352.280-4(a)(12) Government Property. (June 1977)
13. 352.280-4(a)(13) Changes. (June 1977)
14. 352.280-4(a)(14) Notice to the Government of Delays. (June 1977)
15. 352.280-4(a)(15) Retrocession. (June 1977)
16. 352.280-4(a)(16) Reassumption of Programs. (June 1977)
17. 352.280-4(a)(17) Key Personnel. (June 1977)
18. 352.280-4(a)(18) Litigation and Claims. (June 1977)
19. 352.280-4(a)(19) Indemnity and Insurance. (June 1977)
20. 352.280-4(a)(20) Overtime. (June 1977)
21. 352.280-4(a)(21) Foreign Travel. (June 1977)
22. 352.280-4(a)(22) Questionnaires and Surveys. (June 1977)
23. 352.280-4(a)(23) Printing. (June 1977)
24. 352.280-4(a)(24) Services of Consultants. (June 1977)
25. 352.280-4(a)(25) Assignment of Claims. (June 1977)
26. 352.280-4(a)(26) Contract Work Hours and Safety Standards Act-Overtime Compensation. (June 1977)
27. 352.280-4(a)(27) Walsh-Healey Public Contracts Act. (June 1977)
28. 352.280-4(a)(28) Equal Opportunity. (June 1977)
29. 352.280-4(a)(29) Indian Preference in Training and Employment. (June 1977)
30. 352.280-4(a)(30) Certificate of Nonsegregated Facilities. (June 1977)
31. 352.280-4(a)(31) Convict Labor. (June 1977)
32. 352.280-4(a)(32) Officials not to Benefit. (June 1977)
33. 352.280-4(a)(33) Buy American Act Supply and Service contracts. (June 1977)
34. 352.280-4(a)(34) Anti-Kickback Act. (June 1977)
35. 352.280-4(a)(35) Use of Indian Business Concerns. (June 1977)
36. 352.280-4(a)(36) Payment of Interest on Contractors' Claims. (June 1977)
37. 352.280-4(a)(37) Fair and Equal Treatment of Indian People. (June 1977)
38. 352.280-4(a)(38) Price Reduction for Defective Cost or Pricing Data. (June 1977)
39. 352.280-4(a)(39) Subcontractor Cost and Pricing Data. (June 1977)
40. 352.280-4(a)(40) Penalties. (June 1977)
41. 352.280-4(a)(41) Effect on Existing Rights. (June 1977)
42. 352.280-4(a)(42) General Services Administration Supply Sources. (June 1977)

(b) PHSAR Clauses for Fixed-Price Contracts Awarded under the Indian Self-Determination Act.

Number, PHSAR Clause No. and Title and Date of Clause

1. 352.280-4(b)(1) Definitions. (June 1977)
2. 352.280-4(b)(2) Disputes. (June 1977)
3. 352.280-4(b)(3) Contract Work Hours and Safety Standards Act-Overtime Compensation. (June 1977)
4. 352.280-4(b)(4) Walsh-Healey Public Contracts Act. (June 1977)
5. 352.280-4(b)(5) Convict Labor. (June 1977)
6. 352.280-4(b)(6) Notice to the Government of Delays. (June 1977)
7. 352.280-4(b)(7) Assignment of Claims. (June 1977)
8. 352.280-4(b)(8) Officials not to Benefit. (June 1977)
9. 352.280-4(b)(9) Anti-Kickback Act. (June 1977)
10. 352.280-4(b)(10) Penalties. (June 1977)
11. 352.280-4(b)(11) Buy American Act. (June 1977)
12. 352.280-4(b)(12) Equal Opportunity. (June 1977)
13. 352.280-4(b)(13) Certificate of Nonsegregated Facilities. (June 1977)
14. 352.280-4(b)(14) Subcontracting. (June 1977)
15. 352.280-4(b)(15) Competition in Subcontracting. (June 1977)

16. 352.280-4(b)(16) Use of Indian Business Concerns. (June 1977)

17. 352.280-4(b)(17) Indian Preference in Training and Employment. (June 1977)

18. 352.280-4(b)(18) Inspection. (June 1977)

19. 352.280-4(b)(19) Changes. (June 1977)

20. 352.280-4(b)(20) Retrocession. (June 1977)

21. 352.280-4(b)(21) Assumption and Reassumption of Contract Programs. (June 1977)

22. 352.280-4(b)(22) Payment of Interest on Contractor's Claims. (June 1977)

23. 352.280-4(b)(23) Government-Furnished Property. (June 1977)

24. 352.280-4(b)(24) Examination of Records by the Comptroller General. (June 1977)

25. 352.280-4(b)(25) Indemnity and Insurance. (June 1977)

26. 352.280-4(b)(26) Fair and Equal Treatment of Indian People. (June 1977)

27. 352.280-4(b)(27) Reports to the Indian People and Annual Reports. (June 1977)

28. 352.280-4(b)(28) Questionnaries and Surveys. (June 1977)

29. 352.280-4(b)(29) Printing. (June 1977)

30. 352.280-4(b)(30) Price Reduction for Defective Cost or Pricing. (June 1977)

31. 352.280-4(b)(31) Subcontractor Cost and Pricing Data. (June 1977)

32. 352.280-4(b)(32) Advance Payment. (June 1977)

33. 352.280-4(b)(33) Effect on Existing Rights. (June 1977)

34. 352.280-4(b)(34) Federal, State, and Local Taxes. (June 1977)

SUBCHAPTER T—PHS SUPPLEMENTATIONS

PART PHS 380—SPECIAL PROGRAM REQUIREMENTS AFFECTING PHS ACQUISITIONS

Subpart PHS 380.1—Acquisitions Involving Human Subjects

Sec.
PHS 380.101 Applicability.
PHS 380.102 Policy.
PHS 380.103 Assurances.
PHS 380.104 Notice to offerors.
PHS 380.105 Contract clause.

Subpart PHS 380.2—Acquisitions Involving the Use of Laboratory Animals

PHS 380.201 Scope of subpart.
PHS 380.202 Definitions.
PHS 380.203 Policy.
PHS 380.204 Applicability.
PHS 380.205 Contractor implementation.
PHS 380.206 PHS implementation.
PHS 380.207 Examples of acceptable assurance forms.

Subpart PHS 380.3—Acquisition of Drugs and Medical Supplies

PHS 380.301 Scope of subpart.
PHS 380.302 Acquisition of drugs.
PHS 380.302-1 Policy.
PHS 380.302-2 Solicitation and contract requirements.
PHS 380.303 Acquisition of controlled drugs.
PHS 380.304 Effectiveness of drug products.
PHS 380.304-1 General.
PHS 380.304-2 Policy.
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PHS 380.304-4 Distribution of information.
PHS 380.305 Maximum allowable cost for drugs.
PHS 380.305-1 General.
PHS 380.305-2 Applicability.
PHS 380.305-3 Responsibilities.
PHS 380.305-4 Solicitation notification.
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PHS 380.502-5 Buy Indian restricted advertising.
PHS 380.503 Requirements.
PHS 380.504 Competition.
PHS 380.505 Responsibility determinations.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 49 FR 36263, Sept. 14, 1984, unless otherwise noted.

Subpart PHS 380.1—Acquisitions Involving Human Subjects

SOURCE: 51 FR 20491, June 5 1986, unless otherwise noted.

PHS 380.101 Applicability.

This subpart applies to all research and development contracts involving human subjects except those that are exempt by Secretarial waiver under 45 CFR 46.101(e) or exempt under 45 CFR 46.101(b).

PHS 380.102 Policy.

(a) Safeguarding the rights and welfare of human subjects in activities under Public Health Service (PHS) research and development contracts is the responsibility of each institution that receives or is accountable to PHS for funds awarded for the conduct of that activity. To assure that this institutional responsibility is met, PHS shall not permit a nonexempt research activity involving human subjects to be undertaken unless the institution has an assurance on file with the Office for Protection from Research Risks (OPRR), NIH/PHS, and has filed a certification that an institutional review board (IRB) has reviewed and approved the activity in accordance with 45 CFR Part 46.

(b) Contracts involving human subjects will not be awarded to an individual unless he/she is affiliated with or sponsored by an institution which can and will assume responsibility for safeguarding the human subjects involved.

PHS 380.103 Assurances.

In accordance with 45 CFR 46.103, OPRR is responsible for negotiation of assurances covering all PHS-supported research activities involving human subjects. Consultation with OPRR (telephone: 301-496-7041) is recommended on issues regarding assurances, certification of IRB review and approval, and interpretation of the regulations for the protection of human subjects in 45 CFR Part 46.

PHS 380.104 Notice to offerors.

Solicitations shall contain the notice to offerors set forth in PHS 352-280-1(a) whenever contract performance is expected to involve human subjects.

PHS 380.105 Contract clause.

The clause set forth in PHS 352.280-1(b) shall be inserted in all contracts involving human subjects.

Subpart PHS 380.2—Acquisitions Involving the Use of Laboratory Animals

SOURCE: 51 FR 20492, June 5 1986, unless otherwise noted

PHS 380.201 Scope of subpart.

This subpart describes Public Health Service (PHS) contracts for projects or activities involving animals, and the responsibilities of the PHS agencies and subordinate elements for implementing policies and procedures described herein.

PHS 380.202 Definitions.

(a) *Animal.* Any live, vertebrate animal used or intended for use in research, research training, experimentation or biological testing or for related purposes.

(b) *Animal facility.* Any building, room, area, enclosure, or vehicle, including satellite facility, used for animal confinement, transport, maintenance, breeding or experiments of surgical manipulation. A satellite facility is any containment outside of a core facility or centrally designated or managed area in which animals are housed for more than 24 hours.

(c) *Animal Welfare Act.* Pub. L. 89-544, 1966, as amended (Pub. L. 91-579 and Pub. L. 94-279) 7 U.S.C. 2131 et seq. Implementing regulations are published in the Code of Federal Regulations (CFR), Title 9, Subchapter A, Parts 1, 2, 3, and 4, and are administered by the U.S. Department of Agriculture.

(d) *Animal Welfare Assurance or Assurance.* The documentation from an awardee or a prospective awardee institution assuring institutional compliance with this policy.

(e) *Guide. Guide for the Care and Use of Laboratory Animals,* NIH Pub. No. 85-23, 1985 edition or succeeding revised editions.

(f) *Institution.* Any public or private organization, business, or agency (including components of Federal, State and local governments).

(g) *Institutional official.* An individual who has the authority to sign the institution's Assurance, making a commitment on behalf of the institution that the requirement of this subpart will be met.

(h) *Public Health Service.* The Public Health Service includes the Office of the Assistant Secretary for Health; the Alcohol, Drug Abuse, and Mental Health Administration; the Centers for Disease Control; the Food and Drug Administration; the Health Resources and Services Administration; and the National Institutes of Health.

(i) *Quorum.* A majority of the members of the Institutional Animal Care and Use Committee.

PHS 380.203 Policy.

It is the policy of PHS to require institutions to establish and maintain proper measures to ensure the appropriate care and use of all animals involved in research, research training and biological testing (hereinafter referred to as activities) supported by PHS. PHS endorses the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training" developed by the Interagency Research Animal Committee (IRAC). This policy is intended to implement and supplement those Principles.

PHS 380.204 Applicability.

(a) This policy is applicable to all PHS-supported activities involving animals, whether the activities are performed at an awardee institution, or any other institution, in the United States, the Commonwealth of Puerto Rico, or any territory or possession of the United States. Institutions in foreign countries receiving PHS support for activities involving animals shall comply with this policy, or provide evidence to PHS that acceptable standards for the humane care and use of the animals in PHS-supported activities will be met.

(b) No PHS support for an activity involving animals will be provided to an individual unless that individual is affiliated with or sponsored by an institution which can and does assume responsibility for compliance with this policy for PHS-supported activities, or unless the individual makes other arrangements with PHS.

(c) This policy does not supercede or preempt applicable State or local laws or regulations which impose more stringent standards for the care and use of laboratory animals. All institutions are required to comply, as applicable, with the Animal Welfare Act, and other Federal statutes and regulations relating to animals.

PHS 380.205 Contractor implementation.

(a) *Animal Welfare Assurance.* No activity involving animals will be supported by PHS until the institution conducting the activity has provided a written Assurance acceptable to PHS, setting forth compliance with the policy in this subpart for PHS-supported activities. Assurances shall be submitted to OPRR, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 4B09, Bethesda, Maryland 20892. The Assurance shall be typed on the institution's letterhead and signed by an institutional official. OPRR will provide the applicant institution with necessary instructions and an example of an acceptable Assurance. All Assurances submitted to PHS in accordance with the policy will be evaluated by OPRR to determine the adequacy of the institution's proposed program for the care and use of animals in PHS-supported activities. On the basis of this evaluation, OPRR may approve or disapprove the Assurance, or negotiate an acceptable Assurance with the institution. Approval of an Assurance will be for a specified period of time (no longer than five years) after which time the institution must submit a new Assurance to OPRR. OPRR may limit the period during which any particular approved Assurance shall remain effective or otherwise condition, restrict, or withdraw approval. Without an applicable PHS approved Assurance, no PHS-supported activity involving animals at the institution will be permitted to continue.

(1) *Institutional program for animal care and use.* The Assurance shall fully describe the institution's program for the care and use of animals in PHS-supported activities. PHS requires institutions to use the *Guide for the Care and Use of Laboratory Animals* (*Guide*) as a basis for developing and implementing an institutional program for activities involving animals. The program description must include the following:

(i) A list of every branch and major component of the institution, as well as a list of every branch and major component of any institution which is to be included under the Assurance;

(ii) The lines of authority and responsibility for administering the program and ensuring compliance with this policy;

(iii) The qualifications, authority and responsibility of the veterinarian(s) who will participate in the program;

(iv) The membership list of the Institutional Animal Care and Use

Committee(s) (IACUC)[1] established in accordance with the requirements set forth in this subpart;

(v) The procedures which the IACUC will follow to fulfill the requirements set forth in this subpart;

(vi) The health program for personnel who work in laboratory animal facilities or have frequent contact with animals;

(vii) The gross square footage of each animal facility (including satellite facilities), the species housed therein and the average daily inventory, by species, of animals in each facility; and

(viii) Any other pertinent information requested by OPRR.

(2) *Institutional status.* Each institution must assure that its program and facilities are in one of the following categories:

(i) *Category 1*—Accredited by the American Association for the Accreditation of Laboratory Animal Care (AAALAC). All of the institution's programs and facilities (including satellite facilities) for activities involving animals have been evaluated and accredited by AAALAC, or another accrediting body recognized by PHS.[2]

(ii) *Category 2*—Evaluated by the Institution. All of the institution's programs and facilities (including satellite facilities) for activities involving animals have been evaluated by the IACUC and will be reevaluated by the IACUC at least once each year. The IACUC shall use the *Guide* as a basis for evaluating the institution's program and facilities.

A report of the IACUC evaluation shall be submitted to the institutional official and updated on an annual basis.[3] The initial report shall be submitted to OPRR with the Assurance. Annual reports of the IACUC evaluation shall be maintained by the institution and made available to OPRR upon request. The report must contain a description of the nature and extent of the institution's adherence to the *Guide* and this policy.[4] The report must identify specifically any departures from provisions of the *Guide* and this policy, and state the reasons for each departure. If program or facility deficiencies are noted, the report must contain a reasonable and specific plan and schedule for correcting each deficiency. The report must distinguish significant deficiencies from minor deficiencies. A significant deficiency is one which, in the judgment of the IACUC and the institutional official, is or may be a threat to the health or safety of the animals. Failure of the IACUC to conduct an annual evaluation and submit the required report to the institutional official may result in PHS withdrawal of its approval of the Assurance.

(3) *Institutional Animal Care and Use Committee (IACUC).* (i) Each institution shall appoint an Institutional Animal Care and Use Committee (IACUC), qualified through experience and expertise of its members, to oversee the institution's animal program, facilities and procedures.

(ii) The Assurance must include the names, position titles and credentials of the IACUC chairperson and the members. The committee shall consist of not less than five members, and shall include at least:

(A) One Doctor of Veterinary Medicine, with training or experience in laboratory animal science and medicine, who has direct or delegated program responsibility for activities involving animals at the institution;

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[1] The name Institutional Animal Care and Use Committee (IACUC) as used in this policy is intended as a generic term for a committee whose function is to ensure that the care and use of animals in PHS-supported activities is appropriate and humane in accordance with this policy. However, each institution may identify the committee by whatever name it chooses. Membership and responsibilities of the IACUC are set forth in PHS 380.205(d).

[2] As of the issuance date of this policy the only accrediting body recognized by PHS is the American Association for Accredidation of Laboratory Animal Care (AAALAC).

[3] The IACUC may, at its discretion, determine the best means of conducting an evaluation of the institution's programs and facilities. The IACUC may invite ad hoc consultants to conduct or assist in conducting the evaluation. However, the IACUC remains responsible for the evaluation and report.

[4] If some of the institution's facilities are accredited by AAALAC or other accrediting body recognized by PHS, the report should identify those facilities and need not contain any further information about evaulation of those facilities.

(B) One practicing scientist experienced in research involving animals;

(C) One member whose primary concerns are in a nonscientific area (for example, ethicist, lawyer, member of the clergy); and

(D) One individual who is not affiliated with the institution in any way other than as a member of the IACUC, and is not a member of the immediate family of a person who is affiliated with the institution.

(iii) An individual who meets the requirements of more than one of the categories detailed in PHS 380.205(d)(2)(i)-(iv) above, may fulfill more than one requirement. However, no committee may consist of less than five members.

(b) *Functions of the Institutional Animal Care and Use Committee.* As an agent of the institution, the IACUC shall, will respect to PHS-supported activities:

(1) Review at least annually the institution's program for humane care and use of animals;

(2) Inspect at least annually all of the institution's animal facilities, including satellite facilities;

(3) Review concerns involving the care and use of animals at the institution;

(4) Make recommendations to the institutional official regarding any aspect of the institution's animal program, facilities or personnel training;

(5) Review and approve, require modifications in (to secure approval), or withhold approval of those sections of PHS applications or proposals related to the care and use of animals, as specified in PHS 380.205(f) of this subpart;

(6) Review and approve, require modifications in (to secure approval), or withhold approval of proposed significant changes regarding the use of animals in ongoing activities; and

(7) Be authorized to suspend an activity involving animals in accord with specifications set forth in this subpart.

(c) *Review of applications and proposals.* In order to approve applications and proposals or proposed changes in ongoing activities, the IACUC shall conduct a review of those sections related to the care and use of animals and determine that the proposed activities are in accordance with this policy. In making this determination, the IACUC shall confirm that the activity will be conducted in accordance with the Animal Welfare Act insofar as it applies to the activity, and that the activity is consistent with the *Guide*, unless the IACUC determines that acceptable justification for a departure is presented. Furthermore, the IACUC shall determine that the activity conforms with the institution's Assurance and meets the following requirements:

(1) Procedures with animals will avoid or minimize discomfort, distress and pain to the animals, consistent with sound research design.

(2) Procedures that may cause more than momentary or slight pain or distress to the animals will be performed with appropriate sedation, analgesia or anesthesia, unless the procedure is justified for scientific reasons in writing by the investigator.

(3) Animals that would otherwise experience severe or chronic pain or distress that cannot be relieved will be painlessly sacrificed at the end of the procedure or, if appropriate, during the procedure.

(4) The living conditions of animals will be appropriate for their species and contribute to their health and comfort. The housing, feeding and nonmedical care of the animals will be directed by a veterinarian or a scientist trained and experienced in the proper care, handling and use of the species being maintained or studied.

(5) Medical care for animals will be available and provided as necessary by a qualified veterinarian.

(6) Personnel conducting procedures on the species being maintained or studies will be appropriately qualified and trained in those procedures.

(7) Methods of euthanasia used will be consistent with the recommendations of the American Veterinary Medical Association (AVMA) Panel of Euthanasia[5], unless a deviation is justi-

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[5] Journal of the American Veterinary Association (JAVMA), 1978, Vol. 143, No. 1, pp. 59-72, or succeeding revised editions.

fied for scientific reasons in writing by the investigator.

PHS 380.206 Public Health Service implementation.

(a) *Responsibility of the Office for Protection from Research Risks (OPRR).* OPRR is responsible for the general administration and coordination of this policy and will:

(1) Request and negotiate, approve or disapprove, and, as necessary, withdraw approval of Assurances;

(2) Distribute to executive secretaries of initial review and technical evaluation groups, and to PHS contracting offices, lists of institutions that have an approved Assurance;

(3) Advise contracting offices and awardee institutions concerning the implementation of this policy;

(4) Evaluate allegations of noncompliance with this subpart;

(5) Have the authority to review and approve or disapprove waivers of this subpart (see paragraph (d) of this section); and

(6) With other PHS officials, conduct site visits to selected institutions.

(b) *Responsibilities of PHS contracting offices.* PHS contracting offices shall not make an award for an activity involving animals unless the institution submitting the application or proposal is on the list of institutions that have an approved Assurance of file with OPRR, and the institutional official has provided verification of approval by the IACUC of those sections of the application or proposal related to the care and use of animals. If an institution is not listed, the contracting office shall ask OPRR to negotiate an Assurance with the institution before an award is made. No award shall be made until the Assurance has been submitted by the institution, approved by OPRR, and the institution has provided verification of approval by the IACUC of those sections of the application or proposal related to the care and use of animals in PHS-supported activities.

(c) *Conduct of special reviews/site visits.* Each awardee institution is subject to review at any time by PHS staff and advisors, which may include a site visit, to assess the adequacy of the institution's compliance with this policy.

(d) *Waiver.* Institutions may request a waiver of a provision of this policy by submitting a request to OPRR. No waiver will be granted unless sufficient justification is provided, and the waiver is approved in writing by OPRR.

Subpart PHS 380.3—Acquisition of Drugs and Medical Supplies

PHS 380.301 Scope of subpart.

This subpart provides policies and procedures pertaining to the acquisition of drug products and medical supplies by PHS or PHS's contractors.

PHS 380.302 Acquisition of drugs.

PHS 380.302-1 Policy.

(a) Drugs shall be acquired at the lowest possible price consistent with acceptable standards of identity, strength, quality, purity, safety and effectiveness, and with due regard for the welfare of the patient and the professional judgment of the prescriber.

(b) Contracting activities shall ensure that drugs are acquired by generic name on a competitive basis whenever it is possible to obtain therapeutically effective drugs of established quality. However, the professional judgment of the prescriber to request drugs by brand name or house designation must be recognized when the best interest of the patient requires it. Similarly, scientific investigators have the prerogative to request drugs having end-product characteristics considered necessary for the conduct of research or investigations.

(c) Prior to taking any acquisition action, the contracting officer shall ensure that the requested drug products are not available from mandatory sources such as Federal Supply Schedules. Part 103-26 of the HHS Material Management Manual describes sources of supply for drugs.

PHS 380.302-2 Solicitation and contract requirements.

The contracting officer should consider including statements similar to the following in solicitations and resultant contracts pertaining to drug products:

(a) The offeror (contractor) guarantees that all requirements established by the Food and Drug Administration, HHS, have been met. These requirements include: plant sanitation, manufacturing, packaging, labeling, identification, strength, quality, purity, safety, and effectiveness.

NOTE: The contracting officer may want to cite the applicable reference(s) pertaining to the FDA requirements.

(b) The offeror (contractor), by signing this document, guarantees/warrants that any applicable shelf-life requirements have been met and the furnished drugs are free from defects.

(c) The Government reserves the right to inspect the manufacturer's plant and premises during normal operating hours.

NOTE: FDA will normally conduct the inspection when requested, but may request to be reimbursed for the services.

(d) The offeror (contractor) agrees to submit either a comprehensive, certified analysis on each lot of drugs at the time of delivery of the drugs, or a comprehensive list of specifications met by the drugs along with a certificate of analysis, or other suitable documentation, verifying that the drugs meet the appropriate standards.

(e) The offeror (contractor) claims it is not currently listed as a disqualified bidder or offeror for drugs by any Federal agency or department.

(f) The offeror must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(g) If the offeror (prime contractor) plans to use (or uses) a subcontractor or secondary manufacturer for the furnishing of any or all the drug products under the resultant contract, the name and address of the subcontractor or secondary manufacturer is to be furnished the contracting officer, along with the drug lots affected. The prime contractor shall ensure that the subcontractor or secondary manufacturer complies with the above stated requirements.

PHS 380.303 Acquisition of controlled drugs.

(a) Controlled drugs include narcotics and dangerous drugs identified by the Drug Enforcement Administration (DEA), Department of Justice, in the regulations implementing the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Title 21 CFR Chapter II).

(b) The DEA issues a Controlled Substances Inventory List which provides general information pertaining to the ordering of controlled drug products and the use of specific order forms. The local DEA regional office should be contacted to receive the list and instructions regarding registering and ordering forms, as well as other matters concerning the handling and processing of controlled drugs. Sections 103-27.6204(a)(2) and 103-27.6302(b) of the HHS Material Management Manual provide information on issuing, shipping, and safeguarding controlled drugs.

(c) Contracting officers shall ensure that requests for contracts or purchase requests are supported by the required DEA form prior to initiation of any action.

PHS 380.304 Effectiveness of drug products.

PHS 380.304-1 General.

(a) The National Academy of Sciences National Research Council (NAS-NRC) has established effectiveness classifications for the indication of drug products, based upon the following criteria:

(1) Factual information that is freely available in scientific literature;

(2) Factual information that is available from the Food and Drug Administration, the manufacturer, or other sources; and

(3) Experience and informed judgment of the members of NAS-NRC panels.

(b) The indications mentioned in the following categories refer to "the effect the drug purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling." That is, the indications are the claims noted in the labeling of a given drug product.

(1) *Category A—Effective.* For the presented indication, the drug is effective on the basis of the criteria cited in PHS 380.304-1(a) above.

(2) *Category B—Probably Effective.* For the indication presented, effectiveness of the drug is probable on the basis of the criteria cited in PHS 380.304-1(a) but additional evidence is required before it can be assigned to Category A.

(3) *Category C—Possibly Effective.* In relation to the indication in question, there is little evidence of effectiveness under any of the criteria cited in PHS 380.304-1(a). The possibility that additional supporting evidence might be developed should not be ruled out, however.

(4) *Category D—Ineffective.* In relation to the indication in question, there is no acceptable evidence under any of the criteria cited in PHS 380.304-1(a) to support a claim of effectiveness.

PHS 380.304-2 Policy.

(a) It is PHS policy to not acquire drug products classified "ineffective" or "possibly effective" for use in its direct care programs. However, there are two exceptions to this policy:

(1) Drug products categorized as "ineffective" and "possibly effective" may be acquired for use in the pursuit of approved clinical research products.

(2) Drug products categorized as "possibly effective" may be acquired when no alternate means of therapy with drug products in the "probably effective" or "effective" categories are available.

(b) This policy applies to similar drug products marketed by the same or other firms.

PHS 380.304-3 Procedures.

(a) The contracting officer, prior to initiating action on a purchase request or request for contract for drug products, shall ensure that the items are screened against current lists of products identified by the Pharmacy Liaison Officer, Public Health Service, to determine whether acquisition of the items is prohibited, and that the individual actually performing the screening has annotated and initialed the request.

(b) When the request is received for a drug product which is allowable under the exceptions stated in PHS 380.304-2, the contracting officer shall ensure that the appropriate justification is provided, that it is signed by the responsible program official, and that it is included in the contract or purchase request file.

(c) When the request for a restricted drug product cannot be resolved by the substitution of another item, the contracting officer shall consider the request as a deviation and process it in accordance with Subpart 301.4.

PHS 380.304-4 Distribution of information.

(a) The Pharmacy Liaison Officer, Public Health Service, has responsibility for distributing information on the effectiveness of drug products to the principal official responsible for acquisition. The principal official responsible for acquisition will be advised by telephone of drug products classified as "ineffective" or "possibly effective" prior to publication in the FEDERAL REGISTER, and will be provided a monthly list of these drug products following publication in the FEDERAL REGISTER.

(b) The principal official responsible for acquisition shall establish procedures for the distribution of information on the effectiveness of drug products and implement other controls necessary to assure compliance with the policy set forth in PHS 380.304-2.

PHS 380.305 Maximum allowable cost for drugs.

PHS 380.305-1 General.

(a) The regulation entitled "Limitation on Payment or Reimbursement for Drugs," also known as the Maximum Allowable Cost or MAC regulation, is set forth in Part 19 to Subtitle A of Title 45 of the Code of Federal Regulations.

(b) The MAC regulation established departmental policies and procedures for determining allowable drug costs and, where applicable, dispensing fees to be used to establish:

(1) Reimbursement to providers and health maintenance organizations under the Medicare program;

(2) Reimbursement to States under State administered health, welfare, and social service programs; and

(3) Allowable costs under projects for health services.

PHS 380.305-2 Applicability.

(a) This regulation implements the MAC regulation by establishing acquisition procedures consistent with the purpose and intent of the MAC regulation.

(b) This regulation applies to the direct acquisition of drugs by PHS and the acquisition or supply of drugs by PHS contractors.

(c) This regulation does not apply to the acquisition of drugs for research programs made by PHS and its contractors.

PHS 380.305-3 Responsibilities.

(a) The program office which initiates the requirement is responsible for advising the contracting office as to the applicability of the MAC regulation to the proposed acquisition.

(b) The Pharmacy Liaison Officer, PHS, is responsible for distributing to the principal official responsible for acquisition of the MAC determination or data concerning the acquisition cost of drugs. The MAC determination should be furnished within thirty days after publication as a final rule in the FEDERAL REGISTER. Acquisition cost data should be furnished within thirty days after the effective date.

(c) The principal official responsible for acquisition shall establish procedures for disseminating MAC determinations and acquisition cost data and may initiate other actions necessary to ensure compliance with the requirements of this regualation.

PHS 380.305-4 Solicitation notification.

(a) The contracting officer shall ensure that all requests for proposals and invitations for bids which are subject to the provisions of the MAC regulation contain a notice worded substantially as follows:

> This acquisition is subject to the Maximum Allowable Cost (MAC) regulation set forth in Part 19 to Subtitle A of Title 45 of the Code of Federal Regulations.

(b) The contracting officer shall include the applicable MAC determination or acquisition cost data in the RFP or IFB.

(c) The referenced solicitation notice, or a notice worded similarly to it, is required to be included in all applicable solicitations issued by the contractor or its subcontractors.

PHS 380.305-5 Contract requirements.

(a) The contracting officer shall include a clause entitled "Maximum Allowable Cost for Drugs," reading substantially as the clause cited in PHS 352.280-3, in all contracts subject to the provisions of the MAC regulation.

(b) The contracting officer shall incorporate in all contracts subject to the provisions of the MAC regulation the applicable MAC determination or acquisition cost data furnished in the solicitation.

(c) The clause cited in PHS 352.280-3, or a clause worded substantially as that cluase, is required to be included in all applicable contracts awarded by the contractor or its subcontractors.

PHS 380.306 Acquisition of tax free and specially denatured alcohol.

(a) All orders for tax free and specially denatured alcohol shall be placed with the HRSA Supply Service Center, Perry Point, MD. Orders shall be placed in accordance with the ordering instructions contained in the HRSA Medical Supply Catalog.

Subpart PHS 380.4—Contracts Under the Indian Self-Determination Act

PHS 380.400 Scope of subpart.

This subpart prescribes procedures for contracting by the Public Health Service (PHS) under the Indian Self-Determination Act (25 U.S.C. 450f).

PHS 380.401 Applicability of regulations.

Contracts with tribal organizations resulting from the submission of Indian Self-Determination Contract Proposals as authorized in Public Law 93-638 shall be in accordance with 41 CFR Chapters 1 and 3, except as otherwise provided herein. If this subpart conflicts with any of the other provisions of 41 CFR Chapters 1 or 3, the provisions of this subpart govern.

PHS 380.402 Waivers.

(a) The Secretary of Health and Human Services (HHS) waives Federal contract clauses that are normally contained in the General provisions of a contract to the extent that they are omitted from the General provisions prescribed for such contracts in this subpart.

(b) The Secretary may waive for the purpose of a specific contract other provisions of Federal contracting laws or regulations as determined not appropriate in view of, or are inconsistent with, the provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.). Requests for such waivers shall be in accordance with 42 CFR 36.216.

(c) Although it is PHS's policy to obtain competition whenever possible, any contract award to a tribal organization resulting from the submission of an Indian Self-Determination Contract Proposal will be effected without competition.

(d) Proposed contracts under section 103 of the Indian Self-Determination Act are exempted from the synopsis requirements of 41 CFR 1-1.1003. Although subcontracts are subject under section 7(b) of that act to a preference to Indian organizations and to Indian-owned economic enterprises, opportunities to so subcontract may be publicized by contracting officers as provided for in 41 CFR 1-1.1003-4.

PHS 380.403 Negotiating authority.

Contracts entered into pursuant to section 103 of the Indian Self-Determination Act (25 U.S.C. 450g) will cite as the negotiating authority 41 U.S.C. 252(c)(15) and 25 U.S.C. 450g.

PHS 380.404 Definitions.

The definitions prescribed in 42 CFR 36.204 are applicable to this supbart.

PHS 380.405 Types of contracts.

(a) Cost-reimbursement contracts will be used for all contracts made pursuant to this subpart between PHS and an Indian tribe or tribal organization. In addition to other provisions as the Secretary may from time to time require, the cost-reimbursement contracts shall contain the terms set out in PHS 352.280-4(a).

(b) Fixed-price contracts may be used in only these instances where costs can be precisely established. In addition to other provisions as the Secretary may from time to time require, the fixed-price contracts shall contain the terms set out in PHS 352.280-4(b).

(c) Cost sharing contracts may be used where the tribe contributes to the cost of a program and may specify a percentage of cost or fixed amount to be funded by the Government.

PHS 380.406 Term of contract.

(a) The term of contracts awarded under the Act shall not exceed one year except that contracts may be made for a longer term up to three years subject to the availability of appropriations under the following circumstances:

(1) The services provided under the contract can reasonably be expected to be continuing in nature and, as a result, a longer contract term would be advantageous.

(2) The Indian tribe or tribes to be served by the contract request that the term be more than one year. The tribal organizational will indicate the desired term of the contract in the Self-Determination Contract Proposal.

(b) Contract made for a term of more than one year may be renegotiated annually to reflect factors which include, but need not be limited to, cost increases beyond the control of the tribal contractor. Proposed changes in the services provided under the contract which reflect changes in program emphasis may be considered during the annual renegotiation if the changes fall within the general scope of the contract.

PHS 380.407 Exemption from bonds.

A tribal organization is not required to furnish performance and payment bonds before carrying out a contract under this subpart for the construction of public buildings or works as required by the Miller Act of August 24, 1935 (49 Stat. 793), as amended. However, the tribal organization shall require each of its subcontractors other than tribal organizations, to furnish both performance and payment bonds as follows:

(a) A performance bond with a surety or sureties satisfactory to the approving official, and in an amount he/she deems adequate, for the protection of the United States.

(b) A payment bond with a surety or sureties satisfactory to the approving official for the protection of all persons supplying labor and material in the prosecution of the work provided for in the contract. Whenever the total amount payable by the terms of the contract is not more than $1,000,000, the payment bond shall be one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than $1,000,000 but not more than $5,000,000, the payment bond shall be 40 percent of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than $5,000,000, the payment bond shall be $2,500,000.

PHS 380.408 Acquisition of construction and architect-engineering service contract.

(a) This section sets forth procedures and requirements peculiar to construction and architect-engineering service contracts. The terms and conditions of these contracts when negotiated with an Indian tribe or tribal organization pursuant to the Act shall, to the extent applicable, be in accordance with the requirements set forth in 41 CFR Part 1-18 and Subpart 1-4.10. However, if there is a conflict between 41 CFR Part 1-18 and Subpart 1-4.10, and any provision of the Act or 42 CFR Part 36, the Act or 42 CFR Part 36 shall govern. In addition these contracts shall include the special provisions identified in PHS 380.410.

(b) *Exceptions.*

(1) Subpart 1-18.10 of this title is not applicable.

(2) The contract clauses required by § 1-18.703-1 of this title shall be inserted in construction contracts with an Indian tribe or tribal organization which serves as a governmental instrumentality of an Indian tribe, but shall be prefaced by the provision contained in § 1-18.702-3 of this title.

(3) In all cases, the contracting officer shall obtain and insert the Wage Determination Decision issued by the Secretary of Labor in the contract prior to award of any contract for construction that falls within the purview of the Davis-Bacon Act. The Wage Determination Decision should be furnished sufficiently in advance of the contract award date to permit full consideration by the tribal organization and any prospective subcontractors.

PHS 380.409 Performance of personal services.

Any contract made under this subpart may include provisions for the performance of personal services which would otherwise be performed by Federal employees. Such services include, but are not limited to, performing the following functions in connection with the contract and applicable rules and regulations:

(a) Determining the eligibility of applicants for assistance, benefits, or services.

(b) Determining the extent or amount of assistance, benefits, or services to be provided.

(c) Providing such assistance, benefits, or services.

PHS 380.410 Special provisions of Indian Self-Determination contracts.

Contracts entered into pursuant to Section 103 of the Indian Self-Determination Act must incorporate special clauses which are consistent with those prescribed in Subpart I of Part 36 of 42 CFR on the following subjects:

(a) Fair and equal treatment of Indian people.

(b) Use of Indian business concerns.

(c) Indian preference in training and employment.

(d) Indemnity and insurance.

(e) Reports to the Indian people.

(f) Penalties.

(g) Retrocession.

(h) Assumption and reassumption of contract programs.

PHS 380.411 General provisions.

General provisions are published in these regulations (see PHS 352.280-4 for text of clauses) in order to respond to the expressed desire of the Indian people, to have published in one place, all of the terms and conditions applicable to contracts awarded under the Act. These general provisions incorporate the special clauses whose titles are listed in PHS 380.410, above, as well as applicable standard contract clauses.

Subpart PHS 380.5—Acquisitions Under the Buy Indian Act

PHS 380.500 Scope of subpart.

This subpart sets forth the policy on preferential acquisition from Indians under the negotiation authority of the Bay Indian Act. Applicability of this subpart is limited to acquisitions made by or on behalf of the Indian Health Service of the Public Health Service.

PHS 380.501 Policy.

(a) The Indian Health Service will utilize the negotiation authority of the Buy Indian Act to give preference to Indians whenever the use of that authority is authorized and is practicable. The Buy Indian Act was enacted as a proviso to Section 23 of the Act of June 25, 1910, Chapter 431, Pub. L. 313, 61st Congress, 36 Stat. 861,and prescribes the application of the advertising requirements of section 3709 of the Revised Statutes to the acquisition of Indian supplies. As set out in 25 U.S.C. 47, the Buy Indian Act provides as follows:

> So far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior.

(b) The functions, responsibilities, authorities, and duties of the Secretary of the Interior for maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians were transferred to the Secretary of Health, Education, and Welfare, on July 1, 1955 by Pub. L. 568, 83rd Congress, 42 U.S.C. 2001 et seq. Accordingly, the Secretary of Health and Human Services is authorized to use the Buy Indian Act in the acquisition of products of Indian industry in connection with the maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians. This authority has been delegated exclusively to the Indian Health Service and is not available for use by any other HHS component (unless that component is making an acquisition on behalf of the Indian Health Service).

(c) Use of the Buy Indian Act negotiation authority has been emphasized in subsequent legislation, particularly Pub. L. 94-437 and Pub. L. 96-537.

PHS 380.502 Definitions.

PHS 380.502-1 Indian.

Indian means a member of any tribe, pueblo, band, group, village or community that is recognized by the Secretary of the Interior as being Indian or any individual or group of individuals that is recognized by the Secretary of the Interior or the Secretary of Health and Human Services. The Secretary of Health and Human Services in making such determinations may take into account the determination of the tribe with which affiliation is claimed.

PHS 380.502-2 Indian firm.

Indian firm means a sole enterprise, partnership, corporation, or other type of business organization owned, controlled, and operated by one or more Indians (including, for the purpose of sections 301 and 302 of Pub. L. 94-437, former or currently federally recognized Indian tribes in the State of New York) or by an Indian firm; or a nonprofit firm organized for the benefit of Indians and controlled by Indians (see PHS 380.503(a)).

PHS 380.502-3 Product of Indian industry.

Product of Indian industry means anything produced by Indians through physical labor or by intellectual effort involving the use and application of skills by them.

PHS 380.502-4 Buy Indian contract.

Buy Indian contract means any contract involving activities covered by the Buy Indian Act that is negotiated under the provisions of 41 U.S.C. 252(c)(15) and 25 U.S.C. 47 between an Indian firm and a contracting officer representing the Indian Health Service.

PHS 380.502-5 Buy Indian restricted advertising.

Buy Indian restricted advertising is a special method of negotiated acquisition conducted in the same manner as a formally advertised acquisition, except that competition and award are restricted to Indian firms (see FAR 19.101). Thus, a Buy Indian acquisition may be considered an acquisition set-aside for Indian firms in the manner that some acquisitions are set-aside for small business concerns (see FAR 19.101). Set-aside acquisitions are, technically, negotiated acquisitions but should be conducted as if they were formally advertised acquisitions in instances where the formal advertising method would be used if the set-aside was not in effect.

PHS 380.503 Requirements.

(a) *Indian ownership.* The degree of ownership that is called for by PHS 380.502-2 shall be 100 percent during the period covered by a Buy Indian contract unless a deviation from that 100 percent requirement is approved on an individual basis by the cognizant Area or Program Office Director of the Indian Health Service. Such a deviation, which may be to not less than 51 percent, must be accompanied by an appropriate justification for the deviation.

(b) *Joint ventures.* An Indian firm may enter into a joint venture with other entities for specific projects as long as the Indian firm is the managing partner. However, the joint venture must be approved by the contracting officer prior to the award of a contract under the Buy Indian Act.

(c) *Bonds.* In the case of contracts for the construction, alteration, or repair of public buildings or pubic works, performance and payment bonds are required by the Miller Act (40 U.S.C. 270a) and Part 28 of the Federal Acquisition Regulation (48 CFR Ch. 1). In the case of contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe, bonds are not required. However, bonds are required when dealing with private business entities which are owned by an Indian tribe or members of an Indian tribe. Bonds may be required of private business entities which are joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe. A bid guarantee or bid bond is required only when a performance or payment bond is required.

(d) *Indian preference in employment, training and subcontracting.* Contracts awarded under the Buy Indian Act are subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638), which requires that preference be given to Indians in employment, training, and subcontracting. Subpart 370.2 and the contract clauses in 352.270-2 and 352.270-3 represent the Department's implementation of section 7(b). The Indian Preference clause set forth in 352.270-2 shall be included in all Buy Indian solicitations and resultant contracts. The Indian Preference Program clause set forth in 352.270-3 shall be used as specified in 370.202(b). All requirements set forth in Subpart 370.2 which are applicable to the instant Buy Indian acquisition shall be followed by the contracting officer, e.g., sections 370.204 and 370.205.

(e) *Subcontracting.* Not more than 50 percent of the work to be performed under a prime contract awarded pursuant to the Buy Indian Act shall be subcontracted to other than Indian firms. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment.

(f) *Wage rates.* A determination of the minimum wage rates by the Secretary of Labor as required by the Davis-Bacon Act (40 U.S.C. 276a-5) shall be included in all contracts awarded under the Buy Indian Act for over $2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works, except contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe. The wage rate determination is to be included in contracts with private business entities even if they are owned by an Indian tribe or members of an Indian tribe and in connection with joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe.

PHS 380.504 Competition.

(a) Contracts to be awarded under the Buy Indian Act shall be subject to competition among Indians or Indian concerns to the maximum extent that competition is determined by the contracting officer to be practicable, pursuant to FAR 14.101 and FAR 15.105. When competition is determined not to be practicable, a Justification for Noncompetitive Acquisition shall be prepared in accordance with 315.7105 and subsequently retained in the contract file.

(b) Notwithstanding the provisions of Subpart 315.71, a request for approval of noncompetitive acquisitions to be negotiated under the Buy Indian Act may, if $25,000 or less, be approved by the chief of the contracting office,or, if over $25,000, by the cognizant Area or Program Office Director. Approval shall be in the form of a Justification for Noncompetitive Acquisition.

(c) Solicitations must be synopsized and publicized in the Commerce Business Daily (see FAR 5.2 and Subpart 305.2) and copies of the synopses sent to the tribal office of the Indian tribal government directly concerned with the proposed acquisition as well as to Indian concerns and others having a legitimate interest. The synopsis should state that the acquisition is restricted to Indian firms under the Buy Indian Act.

PHS 380.505 Responsibility determinations.

(a) A contract may be awarded under the Buy Indian Act only if it is first determined that the project or function to be contracted for is likely to be satisfactorily performed under such a contract and that the project or function is likely to be properly completed or maintained under that contract.

(b) The determination called for by paragraph (a), to be made prior to the award of a contract, will be made in writing by the contracting officer reflecting an analysis of the standards set forth in FAR 9.104-1, 309.104-1 of this Chapter and PHS 380.502-2.

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SUBCHAPTER A—GENERAL

PART 401—AGRICULTURE ACQUISITION REGULATION SYSTEM

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AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12111, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

401.000 Scope of part.

This part presents introductory information about the Department of Agriculture's Acquisition Regulation, subsequently referred to as the AGAR. The AGAR is an integral part of the Federal Acquisition Regulations System and implements or supplements the Federal Acquisition Regulation (FAR).

Subpart 401.1—Purpose, Authority, Issuance

401.101 Purpose.

(a) This subpart establishes Chapter 4, the Department of Agriculture Acquisition Regulation (AGAR), within Title 48 of the Code of Federal Regulations. The AGAR provides for the codification and publication of uniform policies and procedures for acquisitions by contracting activities within the Department.

(b) The purpose of the AGAR is to implement the Federal Acquisition Regulation (FAR), where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The AGAR is not by itself a complete document, as it must be used in conjunction with the FAR.

401.102 Authority.

The AGAR and amendments thereto are issued under 5 U.S.C. 301 and 40 U.S.C. 486(c). Pursuant to 7 CFR 2.76 the Director, Office of Operations, has the delegated authority to promulgate Departmental acquisition regulations.

401.103 Applicability.

The FAR and AGAR apply to all Department of Agriculture (USDA) acquisitions of supplies and services (including construction) which obligate appropriated funds, unless otherwise specified in this regulation or excepted by law. For acquisitions using nonappropriated funds, these regulations shall be used as guides to the maximum extent feasible and consistent with efficient program operations.

401.103-70 Exclusions.

Certain USDA policies and procedures which come within the scope of this chapter may be excluded from the AGAR under appropriately justified circumstances, such as:

(a) Subject matter which bears a security classification (See FAR 4.402).

(b) Subject matter which is effective for a period less than 6 months.

(c) Subject matter which is instituted on an experimental basis for a reasonable period.

401.104 Issuance.

401.104-1 Publication and code arrangement.

(a) The AGAR is issued in the Code of Federal Regulations as Chapter 4 of Title 48, Federal Acquisition Regulations System, to implement and supplement Chapter 1 which constitutes the FAR. Parts 400 through 499 have been assigned to USDA by the Office of the Federal Register.

(b) The AGAR and its subsequent changes are published in: (1) Daily issues of the FEDERAL REGISTER, (2) cumulative form in the Code of the Federal Regulations, and (3) looseleaf form for distribution within the Department.

401.104-2 Arrangement of regulations.

(a) *General.* The AGAR is divided into the same subchapters, parts, subparts, sections, and subsections as the FAR. However, when the FAR coverage is adequate by itself, there will be no AGAR counterpart. AGAR coverage parallels the FAR in format, arrangement, and numbering system.

(b) *Numbering.* The AGAR numbering system conforms to the FAR. The first digit, "4", represents the chapter number assigned to USDA, followed by a 2-digit part number, and then a decimal point. Numbers after the decimal point represent respectively the subpart, section (two digits) and subsection separated from the former by a dash. For example, the AGAR implementation of FAR 1.104 is shown as 401.104, and of FAR 15.804-3 as 415.804-3. Subdivisions at the section and subsection level are indicated by parenthetical alphanumerics in accordance with the FAR scheme. However, subdivisions below the section and subsection levels may not always correlate directly to FAR designated paragraphs and subparagraphs.

[49 FR 12111, Mar. 28, 1984, as amended at 50 FR 14197, Apr. 10, 1985]

401.104-3 Copies.

Copies of the AGAR published in the FEDERAL REGISTER or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Requests should reference Chapter 4 of Title 48 CFR.

401.105-70 OMB approval under the Paperwork Reduction Act.

The OMB control number 0505-0005 applies to USDA solicitations and specified information collections within the AGAR.

[50 FR 14197, Apr. 10, 1985]

Subpart 401.2—Administration

401.201 Maintenance of the FAR.

401.201-1 The two councils.

(a) The Department is represented on the Civilian Agency Acquisition Council by a Policy Team member of the Procurement Division, Office of Operations.

(b) The Procurement Division will coordinate proposed FAR revisions with interested contracting activities and serve as the point of contact for interpreting regulations or receiving FAR revisions advocated by contracting activities.

Subpart 401.3—Agency Acquisition Regulations

401.301 Policy.

(a) The Director, Office of Operations, subject to the authorities in 401.102 and FAR 1.301(c)(3), shall issue and publish in the FEDERAL REGISTER, as may be required, Departmental regulations to implement and supplement the FAR, that together with the FAR, constitute Department-wide policies, procedures, solicitation provisions, and contract clauses governing the contracting process or otherwise controlling the relationship between the Department (including any of its contracting activities) and contractors or prospective contractors.

(b) Each designated Head of a Contracting Activity (HCA) is authorized to issue or authorize the issuance of, at any organizational level, internal guidance which does not have a significant effect on contractors or prospective contractors. "Significant effect" is defined generally as something which has an effect beyond the internal operating procedures of the activity, or has a cost or administrative impact on offerors or contractors. Internal guidance issued by contracting activities will not be published in the FEDERAL REGISTER. HCAs shall ensure that the guidance, procedures, or instructions issued:

(1) Are consistent with the policies and procedures contained in this regulation;

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable;

(3) Contain no material which duplicates, paraphrases, or is inconsistent with this regulation; and

(4) Are numbered and identified by use of alphabetical suffixes to the chapter number as follows:

4A Agricultural Marketing Service.
4B Agricultural Research Service.
4C Agricultural Stabilization and Conservation Service.
4D Farmers Home Administration.
4E Food Safety and Inspection Service.
4F Foreign Agricultural Service.
4G Forest Service.
4H Rural Electrification Administration.
4I Soil Conservation Service.
4J Economics Management Staff.
4K Food and Nutrition Service.
4L Animal and Plant Health Inspection Service.
4M Federal Crop Insurance Corporation.
4N Office of Operations, Procurement Division (Procurement Operations).
4O [Reserved].
4P Office of International Cooperation and Development.
4R Office of the Inspector General.
4S Extension Service.

[49 FR 12111, Mar. 28, 1984, as amended at 50 FR 14197, Apr. 10, 1985]

401.303 Codification and public participation.

(a) The AGAR is codified as Chapter 4 Title 48 of the Code of Federal Regulations.

(b) Section 553(a)(2) of the Administrative Procedures Act, 5 U.S.C. 553, provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter related to agency management or personnel or to public property, loans, grants, benefits or contracts. OFPP Policy Letter 83-2 requires rulemaking for substantive acquisition rules but allows discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, AGAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedures Act and OFPP Policy Letter 83-2. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

401.304 Agency control and compliance procedures.

(a) The AGAR System is under the direct oversight and control of the Director, Office of Operations, who is responsible for review and issuance of all Department-wide acquisition regulations published in the FEDERAL REGISTER to assure compliance with FAR Part 1.

(b) The Director, Office of Operations, is also responsible for review and issuance of unpublished, Department-wide internal guidance under the AGAR System.

(c) HCA's are responsible for establishment and implementation of formal procedures for oversight and control of all unpublished internal guidance issued to implement FAR or AGAR requirements. These procedures shall be subject to the review and approval by the Director, Office of Operations, and shall include:

(1) Provisions for centralized issuance of all guidance and instructions using a directives system;

(2) Methods for periodic review and updating of all issuances;

(3) Distribution processes which assure timely receipt by all affected contracting offices; and

(4) Provisions for maintaining compliance with FAR 1.304.

(d) The Director, Office of Operations, is responsible for evaluating coverage under the AGAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the HCA to the Director, Office of Operations, for further action.

401.370 Departmental directives.

Subject to the policies of FAR 1.3, the Department from time to time may issue internal directives of the following types to establish procedures, standards, guidance, or methods of performing duties, functions, or operations.

(a) *Departmental Regulations* (DR). Permanent directives signed by the Director, Office of Operations, to issue policies, authorities, and operating instructions.

(b) *Departmental Notices* (DN). Temporary directives signed by the Director, Office of Operations, to communicate policy or procedure which require immediate dissemination.

(c) *Secretary's Memoranda*. Temporary directives signed by the Secretary which establish major policy concerning missions and programs of the Department, direct initial or implementing action on these programs, or redirect or change policy or action in these areas.

Subpart 401.4—Deviations From the FAR and AGAR

401.402 Policy.

(a) Requests for authority to deviate from the provisions of the FAR or the AGAR shall be submitted in writing as far in advance as the exigencies of the situation will permit. Each request for deviation shall contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or AGAR;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

401.403 Individual deviations.

In individual cases, deviations from either the FAR or the AGAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make such deviations clearly in the best interest of the Government. Except for cost principles, HCA's may approve individual deviations from the AGAR, after coordinating with the General Counsel and the Director, Office of Operations. No deviations from the FAR or AGAR may be authorized at the contracting office level. A copy of each deviation and its supporting documentation shall be provided to the Director, Office of Operations. Deviations involving cost principles contained in FAR Part 31 and Part 431, or any FAR deviation, shall not be made unless such action is authorized by the Director, Office of Operations, after consultation with the Office of General Counsel and any other appropriate office, on the basis of a written justification stating clearly the special circumstances involved.

401.404 Class deviations.

Where deviations from the FAR or AGAR are considered necessary for classes of contracts, requests for authority to deviate shall be submitted in writing to the Director, Office of Operations, who will, after obtaining appropriate concurrences from other officials (e.g., General Counsel, and such other parties of interest), consider the submission, and in the case of FAR deviations, consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council. Where circumstances preclude obtaining prior concurrence of the Chairperson of the Civilian Agency Acquisition Council, the Procurement Executive may authorize the deviation and subsequently inform the Chairperson of the Civilian Agency Acquisition Council of the deviation including the circumstances under which it was required.

Subpart 401.6—Contracting Authority and Responsibilities

401.601 General.

(a) The authority and responsibility vested in the Secretary to manage the Department's acquisition function is delegated through the Assistant Secretary for Administration to the Director, Office of Operations, who is the USDA Procurement Executive, pursuant to 7 CFR 2.76(a) (1) and (10). This broad authority includes, but is not limited to, the following responsibilities:

(1) Prescribing and publishing Departmental acquisition policies, regulations, and procedures.

(2) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(3) Designating contracting officers.

(4) Establishing clear lines of contracting authority.

(5) Evaluating and monitoring the performance of the Department's acquisition system.

(6) Managing and enhancing career development of the contracting work force.

(7) Participating in the development of Government-wide acquisition policies, regulations, and standards and determining specific areas where Government-wide performance standards should be established and applied.

(8) Determining areas of Department-unique standards and developing unique Department-wide standards.

(9) Certifying to the Secretary that the acquistion system meets approved standards.

(b) The Director, Office of Operations, may delegate contracting authority to the Heads of Contracting Activities (HCA's) and the responsibility to manage their acquisition function. Delegations of authority for automatic data processing (ADP) equipment, services and related supplies are limited in accordance with Part 439.

[49 FR 12111, Mar. 28, 1984, and 50 FR 14197, Apr. 10, 1985, as amended at 51 FR 34564, Sept. 29, 1986]

401.603 Selection, appointment, and termination of appointment.

401.603-1 General.

An HCA may delegate contracting authority to the extent authorized by the Procurement Executive in a general delegation of acquisition authority, by appointing qualified individuals as contracting officers, in accordance with the USDA Contracting Officer Warrant System, Departmental Regulation 5001-1. Contracts may be entered into and signed only by the Agency Head, HCA's, or other duly appointed contracting officers acting within the scope of their authority.

[51 FR 34564, Sept. 29, 1986]

401.670 Legal review and assistance.

Proposed acquisitions may be subject to legal review by the Office of the General Counsel in accordance with the procedures contained in Departmental Directives (5000 series).

[50 FR 14197, Apr. 10, 1985]

401.671 Ratification of unauthorized contract awards.

[51 FR 34565, Sept. 29, 1986]

401.671-1 Definitions.

"Ratification," as used in this section, means the signed, documented action taken by an authorized official to approve and sanction a previously unauthorized commitment.

"Unauthorized commitment," as used in this section, means an agreement made by a Government representative who lacked the authority to enter into a contract on behalf of the Government.

[51 FR 34565, Sept. 29, 1986]

401.671-2 Authority.

Only contracting officers acting within the scope of their authority may enter into contracts on behalf of the Government (see FAR 1.602). However, subject to the limitations in 401.671-3 below, an HCA or contracting officer having redelegable contracting authority may ratify, to the extent of their individual delegations of authority, unauthorized commitments.

[51 FR 34565, Sept. 29, 1986]

401.671-3 Limitations on exercise of authority.

(a) The authority in 401.671-2 above may be exercised only if—

(1) The work under the unauthorized commitment was needed by the Government and was for the Government's benefit;

(2) The ratifying official could have granted authority to enter into the commitment at the time it was made and still has the power to do so;

(3) The resulting contract would otherwise be proper. As used herein, the phrase "otherwise proper" means that a ratification of an unauthorized commitment can be made only if there occurred no violation of any substantive legal requirement, e.g., there can be no ratification unless the use of other than full and open competition can be justified and approved; a determination made that the contractor is not debarred or otherwise ineligible for award; the organizational conflict of interest reviews and determinations, if required, are completed; and all other substantive legal requirements have been met;

(4) Supplies or services being provided are acceptable to the Government;

(5) The ratifying official determines the price to be fair and reasonable;

(6) The ratifying official recommends payment; and

(7) Funds are available and were available at the time the unauthorized commitment was made.

(b) Any unauthorized commitment that would involve claims subject to resolution under the Contract Disputes Act of 1978 shall be processed in accordance with FAR Subpart 33.2.

[51 FR 34565, Sept. 29, 1986]

401.671-4 Procedures.

Whenever a ratifying official of the cognizant contracting activity learns that a person or firm has assumed work as a result of an unauthorized commitment, that official shall take the following actions:

(a) Immediately inform any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;

(b) Inform the person who made the unauthorized commitment of the seriousness of the act and the possible consequences;

(c) Ensure that the individual who made the unauthorized commitment furnishes all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to: a statement as to why a contracting officer was not used; why the vendor was selected and a list of sources considered; a description of work to be performed or products to be furnished; the estimated or agreed price; whether an appropriation is available for the work; and whether performance has begun. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the ratifying official may waive these requirements; and

(d) Decide whether ratification is proper and proceed as follows:

(1) If ratification is not justifiable, provide the cognizant program office, contracting office, and the unauthorized contractor with an explanation of the decision not to ratify.

(2) If ratification appears adequately justified, ratify the action and retain or assign the contract to a successor contracting officer if necessary.

(3) Maintain related approval, decisional, and background documents in the contract file for audit purposes.

(4) Notify the cognizant program supervisor or line officer about the final disposition of the case; the notification may include a recommendation that the unauthorized commitment should be further considered as a violation of the employee conduct regulations of the Department. (See 7 CFR 0.735-11).

[51 FR 34565, Sept. 29, 1986]

401.671-5 Nonratifiable commitments.

Cases that are not ratifiable under this section may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 CFR Part 31), or as authorized by FAR Part 50. Legal advice should be obtained in those instances.

[51 FR 34565, Sept. 29, 1986]

Subpart 401.70—Procurement Management Reviews

SOURCE: 51 FR 34565, Sept. 29, 1986, unless otherwise noted.

401.7001 General.

It is the policy of the Office of Operations to regularly conduct procurement management reviews (PMRs) of contract activities' procurement management and operations. This will fulfill a responsibility of the Senior Procurement Executive under Executive Order 12352 and the duties stated in 7 CFR 2.25 and 7 CFR 2.76, to oversee development of procurement systems and evaluate systems performance.

401.7002 Purpose.

Procurement management review will be conducted for the principal purpose of ensuring compliance with the FAR, AGAR, and other Federal procurement laws and regulations. Reviews will also analyze staffing, training, agency regulations, forms, organization, and overall management of the procurement function.

401.7003 Scheduling.

Reviews will normally be scheduled at least 60 days in advance. A scheduling letter, requesting some specific information from the office to be reviewed, will be sent to the HCA after preliminary discussions with the HCA's administrative services director to avoid scheduling conflicts, periods of personnel absences, etc. Review plans will be discussed, and, to the extent feasible, coordinated with the Offices of Finance and Management, Inspector General, and Advocacy and Enterprise.

401.7004 Frequency.

The Office of Operations will review at least one major procurement office within each contract activity on a 2 or 3-year cycle. Large contracting activities with decentralized procurement will receive more frequent reviews, as time and resources permit. Occasionally, more frequent or more in-depth reviews may be necessary to analyze special problem situations. HCA's are encouraged to make their internal review schedules known to the Office of Operations-PMR Team, and may request assistance in performing their internal reviews.

401.7005 Guidelines.

Guidelines for conducting PMR's are found in the Office of Operations, Procurement Management Review Handbook.

401.7006 Reports.

Draft reports of findings, recommendations and required corrective actions will be sent to administrative services directors for review and comment on factual inaccuracies or statements unfounded in fact. Final reports will be sent to HCA's. Reports will also contain suggestions for improvements in procedure and management of the acquisition function.

PART 402—DEFINITIONS OF WORDS AND TERMS

Sec.
402.000 Scope of part.
402.001 Definitions.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12113, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

402.000 Scope of part.

As used throughout this regulation, the following words and terms are used as defined in this subpart unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part.

402.001 Definitions.

"Agency Head" or "Head of the Agency" means the Secretary of Agriculture, Deputy Secretary, and the Assistant Secretary for Administration.

"Contracting Activity" means the Office of Operations and other USDA organizations having delegated acquisition contracting authority. A contracting activity's authority and responsibility to manage its acquisition contracting function and those of other organizations for which it provides administrative support are established by a written delegation from the Director, Office of Operations.

"Head of the Contracting Activity" (HCA) means the official who has overall responsibility for managing the contracting activity, i.e., Chief, Forest Service; Administrator, Agricultural Marketing Services; etc. Each HCA may designate one individual from the contracting activity to act as the HCA and perform the delegated contract management functions for the contracting activity.

"Procurement Executive" means the agency official appointed as such by the Head of the Agency pursuant to Exectutive Order 12352. The Director, Office of Operations, has been designated as the USDA Procurement Executive.

PART 403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 403.2—Contractor Gratuities to Government Personnel

Sec.
403.203 Reporting suspected violation of the gratuities clause.
403.204 Treatment of violations.

Subpart 403.3—Reports of Identical Bids and Suspected Antitrust Violations

403.302 Reporting Identical Bids.
403.303 Reporting suspected antitrust violations.

Subpart 403.4—Contingent fees

403.408 Evaluation of the SF.-119.
403.408-1 Responsibilities.
403.409 Misrepresentations or violations of the Convenant Against Contingent Fees.

Subpart 403.5—Other Improper Business Practices

403.502 Subcontractor kickbacks.

Subpart 403.6—Contracts with Government Employeees or Organizations Owned or Controlled by Them

403.602 Exceptions.
403.603 Responsibilities of the contracting officer.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12113, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 403.2—Contractor Gratuities to Government Personnel

403.203 Reporting suspected violation of the gratuities clause.

A suspected violation of the contract clause, FAR 52.203-3, Gratuities, shall be reported immediately to the cognizant contracting officer in writing, stating the circumstances surrounding the incident(s), and date(s) and names of all parties involved. The contracting officer shall review the report for completeness, add any additonal information deemed necessary and a recommendation for action, and submit the report to the HCA.

403.204 Treatment of violations.

The HCA shall review the report and consult with the Offices of General Counsel and Inspector General, as appropriate, to determine whether further action should be pursued. If it is found that the facts and circumstances warrant further action, the HCA shall give the contractor formal, written notice which summarizes the reported violation and affords the contractor the opportunity to make a written or oral response within a reasonable, specified period after receipt of the notice. The notice shall be sent by certified mail with return receipt requested. Oral presentations shall follow the procedures outlined in FAR 3.204(b). The HCA shall furnish copies of any adverse determination to the contracting officer and the Department Debarring Officer for their subsequent considerations under FAR 3.204(c) (1) and (2), respectively.

Subpart 403.3—Reports of Identical Bids and Suspected Antitrust Violations

403.302 Reporting identical bids.

Executive Order 12430 dated July 6, 1983, revoked the requirement of Executive Order 10936 dated April, 24, 1961, to submit reports to the Attorney General regarding identical bids.

403.303 Reporting suspected antitrust violations.

Contracting officers shall report the circumstances of suspected violations of antitrust laws to the Office of Inspector General in accordance with procedures in Departmental Regulation 1710-2.

[50 FR 14197, Apr. 10, 1985]

Subpart 403.4—Contingent Fees

403.408 Evaluation of the SF-119.

403.408-1 Responsibilities.

The review required by FAR 3.408-1(b) shall be performed at a level higher than the contracting officer.

403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) A suspected misrepresentation or violation of the Covenant Against Contingent Fees shall be documented in writing by the contracting officer and reported immediately to the HCA. The HCA shall determine if a violation has occurred and take action in accordance with FAR 3.409(b).

(b) If the HCA decides to refer the case to the Department of Justice, it should be referred directly with a copy of the report and referral submitted to the Director, Office of Operations.

Subpart 403.5—Other Improper Business Practices

403.502 Subcontractor kickbacks.

Contracting officers shall report the circumstances of suspected violations of the Anti-Kickback Act (41 U.S.C. 51-54) to the Office of Inspector General in accordance with procedures in Departmental Regulation 1710-2.

[50 FR 14197, Apr. 10, 1985]

Subpart 403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

403.602 Exceptions.

The HCA is authorized to except a contract from the policy in FAR 3.601.

403.603 Responsibilities of the contracting officer.

The contracting officer, when requesting authorization under 403.602, shall prepare a written determination and findings for the signature of the HCA. The determination shall document compliance with FAR 3.603 specifying the compelling reason(s) for award, and be placed in the contract file.

PART 404—ADMINISTRATIVE MATTERS

Subpart 404.4—Safeguarding Classified Information Within Industry

Sec.
404.402 General.
404.403 Responsibilities of contracting officers.

Subpart 404.6—Contract Reporting

404.601 Federal Procurement Data System.
404.670 Solicitation provision.

Subpart 404.8—Contract Files

404.805 Disposal of contract files.
404.870 Document numbering system.
404.870-1 Purchase order/delivery order numbering system.
404.870-2 Contract numbering system.

Subpart 404.70—Precontract Notices

404.7001 Solicitation provision.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12114, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 404.4—Safeguarding Classified Information Within Industry

404.402 General.

(a) Based on an agreement with the Department of Defense, USDA is covered by the Defense Industrial Security Program (DISP). Accordingly, all contracting activities will conduct classified acquisitions as required by the DISP.

(b) Detailed information on DISP requirements is maintained by the Chief, Security and Employee Relations Staff, Office of Personnel, Washington, DC 20250.

404.403 Responsibilities of contracting officers.

When a proposed solicitation is likely to require access to information classified by USDA, the contracting officer shall consult with the Chief, Security and Employee Relations Staff, Office of Personnel, regarding the procedures that must be followed.

Subpart 404.6—Contract Reporting

404.601 Federal Procurement Data System.

(a) The Procurement Division, Office of Operations, manages an automated procurement reporting system for USDA. This system provides the Federal Procurement Data System with all required contracting information.

(b) Contracting activities shall report all contract actions into the USDA Procurement Reporting System in accordance with the regulations and notices of the 5010 classification series in the Departmental Directives System.MI11(c) Questions about the USDA Procurement Reporting System should be directed to the Procurement Division, Office of Operations, Washington, DC 20250.

404.670 Solicitation provision.

The contracting officer shall insert the provision at 452.204-70, Data Universal Numbering System (DUNS), in each solicitation that will result in an award which will be subject to reporting on Form AD-760.

[53 FR 6062, Feb. 29, 1988]

Subpart 404.8—Contract Files

404.805 Disposal of contract files.

Contracting activities shall comply with their organizational file plans and disposition guides with respect to procedures for handling, storing, and disposing of contract files and other acquisition related documents. Contracting activity file plans and disposition guides shall not include provisions that permit contract files to be destroyed before the times indicated in FAR 4.805.

404.870 Document numbering system.

The Department has prescribed a standardized numbering system for acquisition documents.

404.870-1 Purchase order/delivery order numbering system.

USDA purchasing activities shall number their purchase/delivery orders in accordance with NFC Procedures Manual, "Purchase Orders," Title II, Section 5.1.

404.870-2 Contract numbering system.

Contracting offices shall assign an 8 to 12-digit number to all contracts. Contract numbers will be divided into four data elements and formatted as follows:

(1)	(2)	(3)	(4)
Transaction code	Ordering office	Fiscal year	Control No
xx	xxxx	x	x to xxxxx

(a) *Transaction Code.* This two-position code identifies the contract as being one of the following types:

(1) Code 50—construction contract;

(2) Code 51—[Reserved]

(3) Code 52—tree planting/thinning contract;

(4) Code 53—service contract;

(5) Code 54—supply contract;

(6) Code 55—aircraft rental (for firefighting purposes only) contract;

(7) Code 56—personal equipment rental (rental of vehicular equipment for firefighting purposes only) contract;

(8) Code 57—leasehold interest in real property contract

(b) *Ordering Office.* This four-position alpha-numeric code corresponds to the last four characters of the contracting office's GSA assigned FEDSTRIP requisitioner number.

(c) *Fiscal Year.* This one-position code corresponds to the last digit of the fiscal year in which the contract becomes effective.

(d) *Control Number.* This up-to-five position code (from one to five characters may be used) will be assigned by the contracting office. While contracts will generally be numbered consecutively (1 through 99999), contracting offices may assign codes in any manner of their choosing. Codes may not be repeated, however, unless one of the preceding data elements (transaction code, ordering office, or fiscal year) changes. Alpha, as well as numeric, characters may be used in any one or more of the five positions.

[49 FR 12114, Mar. 28, 1984, as amended at 50 FR 14197, Apr. 10, 1985]

Subpart 404.70—Precontract Notices

404.7001 Solicitation provision.

The contracting officer shall insert a provision substantially the same as the provision at 452.204-71, Inquiries, in all solicitations.

[53 FR 6062, Feb. 29, 1988]

SUBCHAPTER B—ACQUISITION PLANNING

PART 405—PUBLICIZING CONTRACT ACTIONS

Subpart 405.4 Release of Information

Sec.
405.404-1 Release procedures.

Subpart 405.5—Paid Advertisements

405.502 Authority.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12115, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 405.4—Release of Information

405.404-1 Release procedures.

(a) HCA's shall establish procedures to control the release of long-range acquisition estimates as authorized under FAR 5.404-1.

(b) Classified information shall not be released without the approval of the Chief, Security and Employee Relations Staff, Office of Personnel.

[49 FR 12115, Mar. 28, 1984, as amended at 50 FR 14197, Apr. 10, 1985]

Subpart 405.5—Paid Advertisements

405.502 Authority.

HCA's are authorized to order the publication of an advertisement in newspapers. HCA's may redelegate this authority by regulation, order, or memorandum to subordinates within the contracting activity.

PART 406—COMPETITION REQUIREMENTS

Subpart 406.3—Other Than Full Open Competition

406.302 Circumstances permitting other than full and open competition.
406.302-70 Otherwise authorized by law.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c); and Sec. 1470, Pub. L. 95-113, 91 Stat. 1019 (7 U.S.C. 3316).

SOURCE: 51 FR 34566, Sept. 29, 1986, unless otherwise noted.

Subpart 406.3—Other Than Full and Open Competition

406.302 Circumstances permitting other than full and open competition.

406.302-70 Otherwise authorized by law.

(a) *Authority.* Section 1472 of the National Agricultural Research, Extension,and Teaching Policy Act of 1977 (7 U.S.C. 3318) authorizes the Secretary to award contracts, without competition, to further research, extension, or teaching programs in the food and agricultural sciences.

(b) *Limitations.* The use of this authority is limited to those instances where it can be determined that contracting without full and open competition is in the best interest of the Government and necessary to the accomplishment of a research, extension, or teaching program. Therefore:

(1) Contracts under the authority of the Act shall be awarded on the basis of full and open competition; and

(2) When full and open competition is not deemed apropriate, the contracting officer shall make a written justification on a case-by-case basis in accordance with the procedures in FAR 6.303.

PART 407—ACQUISITION PLANNING

Subpart 407.1—Acquisition Plans

Sec.
407.102 Policy.
407.170 Advance acquisition plans.

Subpart 407.3—Contractor Versus Government Performance

407.302 General.
407.305 Solicitation provision and contract clause.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12115, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 407.1—Acquisition Plans

407.102 Policy.

Each HCA shall develop an acquisition planning system in compliance with the requirements of FAR Subpart 7.1 for complex/high dollar acquisitions. The HCA should establish the criteria for requiring formal written plans and determine the dollar thresholds for use in each contracting activity that will ensure application of the principles of this section in FAR Subpart 7.1.

407.170 Advance acquisition plans.

Each HCA shall implement an advance acquisition planning system in accordance with procedures in Departmental Directives (5000 series).

[49 FR 12115, Mar. 28, 1984, as amended at 50 FR 14197, Apr. 10, 1985]

Subpart 407.3—Contractor Versus Government Performance

407.302 General.

The requirements of FAR Subpart 7.3 and OMB Circular A-76 are implemented in Departmental Directives (2100 series).

[50 FR 14197, Apr. 10, 1985]

407.305 Solicitation provision and contract clause.

The contracting officer shall insert the clauses at 452.207-70, Definition of "Right of First Refusal", and 452.207-71, Report of Employment Under Commercial Activities, when the clause at FAR 52.207-3, Right of First Refusal of Employment, is used.

[53 FR 6063, Feb. 29, 1988]

PART 408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 408.8—Acquisition of Printing and Related Suppies

408.802 Policy.

(a) The Office of Governmental and Public Affairs (OGPA) has been designated as the Department's liaison with the Joint Committee on Printing (JCP) and the Public Printer, Government Printing Office, on all matters related to printing.

(b) Departmental organizations and offices with publication programs have designated a publication liaison officer who is authorized to coordinate appropriate printing and publication matters with OGPA.

(c) Prior to contracting for any of the items defined in FAR 8.801, the contracting officer shall verify that the requisite approval has been received by the publication liaison officer or requisitioner.

[49 FR 12115, Mar. 28, 1984, as amended at 50 FR 14197, Apr. 10, 1985]

PART 409—CONTRACTOR QUALIFICATIONS

Subpart 409.4—Debarment, Suspension and Ineligibility

Sec.
409.403 Definitions.
409.404 Consolidated list of debarred, suspended, and ineligible contractors.
409.405 Effect of listing.
409.405-1 Continuation of current contracts.
409.405-2 Restrictions on subcontracting.
409.406 Debarment.
409.406-3 Procedures.
409.407 Suspension.
409.407-3 Procedures.
409.470 Appeals.

Subpart 409.5—Organizational Conflict of Interest

409.503 Waiver.
409.504 Contracting officer responsibilities.
409.507 Procedures.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12115, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 409.4—Debarment, Suspension and Ineligibility

409.403 Definitions.

"Debarment official." The Director, Office of Operations, is designated as the debarment official (Department Debarring Officer) pursuant to the

Secretary's delegations of authority in 7 CFR 2.25 and 2.76. However, for contracts awarded under the School Lunch and Surplus Removal Program (42 U.S.C. 1755 and 7 U.S.C. 612C), the Department Debarring Officer has delegated debarring authority to the Agricultural Marketing Service.

409.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Department Debarring Officer is the department's single point of contact with GSA for debarment and suspension actions taken under this subpart. The debarring officer in the Agricultural Marketing Service shall notify the Department Debarring Officer of each debarment and suspension action by promptly submitting a copy of the debarment or suspension notice and any later changes to the debarment or suspension status. The Department Debarring Officer will forward a copy of each notice to GSA for inclusion in the Government-wide consolidated list.

(b) The Chief, Procurement Division, Office of Operations, is responsible for arranging bulk distribution of the consolidated list to contracting activities under the USDA Automated Mailing List. Contracting activities must make their own internal distribution.

409.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Director, Office of Operations, is authorized to make the determinations under FAR 9.405. Requests for such determinations shall be submitted through the HCA to the Director, Office of Operations.

409.405-1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405-1.

409.405-2 Restrictions on subcontracting.

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405-2.

409.406 Debarment.

409.406-3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406-3(c) and notify the HCA of the action taken.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment. The contractor shall be provided a copy of a transcript of the proceedings under the conditions established in FAR 9.406-3(b)(2)(ii).

409.407 Suspension.

409.407-3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines suspension is justified, the debarring official shall initiate the proposed suspension in accordance with FAR 9.407-3(c) and notify the HCA of the action taken.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.407-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in 409.406-3(c).

409.470 Appeals.

A debarred or suspended contractor may appeal the debarring officer's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the U.S. Department of Agriculture Board of Contract Appeals, Washington, DC 20250. A copy of the notice of appeal shall be furnished to the debarring officer from whose decision the appeal is taken. Appeals under Subpart 409.4 shall be governed by the rules and procedures of the U.S. Department of Agriculture Board of Contract Appeals set forth in 7 CFR, Part 24.

Subpart 409.5—Organizational Conflicts of Interest

409.503 Waiver.

(a) The Director, Office of Operations, is authorized to waive any general rule or procedure in FAR 9.5 when in the Government's interest.

(b) Requests for waiver shall be made by the HCA. Each request shall include:

(1) The general rule or procedure proposed to be waived;

(2) An analysis or the potential conflict, including the benefits and detriments to the Government and prospective contractors;

(3) A discussion of why the conflict cannot be avoided, neutralized, or mitigated; and

(4) Advice of counsel obtained under FAR 9.504(b).

409.504 Contracting officer responsibilities.

The contracting officer shall insert a clause substantially the same as the clause at 452.209-70, Organizational Conflict of Interest, in solicitations and contracts, if there is a potential for an organizational conflict of interest as described in FAR Subpart 9.5.

[53 FR 6063, Feb. 29, 1988]

409.507 Procedures.

(a) The Director, Office of Operations, is authorized to make the final decision under FAR 9.507(c)(4) when a prospective contractor disagrees with the decision by the HCA.

(b) Referrals shall be made by the HCA and include:

(1) A copy of the prospective contractor's request; and

(2) The initial decision made under FAR 9.507(a), along with the supporting documentation.

PART 410—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

410.004 Selecting specifications or descriptions for use.
410.007 Deviations.
410.011 Contract clauses.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12117, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 19, 1985 (final rule), unless otherwise noted.

410.004 Selecting specifications or descriptions for use.

(a) In accordance with FAR 10.004(b)(2), purchase descriptions shall not specify a product, or specific feature of a product, peculiar to a manufacturer unless the office initiating the purchase request furnishes written documentation and the contracting officer concurs that the product, or specific product feature, is essential to the Government's requirements and other similar products will not meet their requirements.

(b) A "brand name or equal" purchase description shall be used only under the conditions listed in FAR 10.004(b)(3) and in accordance with the following policies and procedures.

(1) A "brand name product" is a commercial product described by its brand name, make, model number, catalog designation or other description by which it is regularly offered for sale in the commercial marketplace.

(2) A "Brand Name, or Equal" purchase description shall include the following type information to clearly indentify the specific item named by brand(s):

(i) Identification of the item by generic description.

(ii) Make, model number, catalog designation, or other description, and identification of the commercial catalog where it is listed.

(iii) Name of manufacturer, producer, or distributor of the item and complete address.

(3) All salient characteristics of the "brand name product or products" which have been determined by the initiating office to be essential to the Government's minimum requirements shall be clearly identified and included in the purchase description under the heading, "Salient Characteristics."

(4) The following or similar language shall be included in every solicitation seeking offers on a "brand name, or equal" basis to allow offerors the opportunity to clearly identify the "equal" item being offered, and how that item meets the salient characteristics requirements of the Government:

(i) Offerors proposing to furnish an "equal" product, in accordance with the "Brand Name, or Equal" provision of this solicitation, shall provide the following information for the offered product:

Item Number: ______
Manufacturer's Name: ______
Address: ______
Product Name (if any): ______
Product Make, Model or Catalog Description: ______

______

Offerors shall also be responsible for submitting all additional information on the above product necessary for the Government to determine whether the product offered meets the salient characteristics of the "brand name" as listed in the solicitation.

(5) In addition, the provision at 452.210-70, Brand Name or Equal, shall be inserted in solicitations where "brand name or equal" purchase descriptions are used. This provision may be modified for use in negotiated contracts.

(c) The policies and procedures in this section and the provision at 452.210-70 are not applicable to contracts for construction services, since the use of trade name descriptions are covered by the clause at FAR 52.236-5, Material and Workmanship.

[49 FR 12117, Mar. 28, 1984, as amended at 50 FR 14198, Apr. 10, 1985]

EFFECTIVE DATE NOTE: The information collection requirements contained in § 410.004 will not be required until approved by the Office of Management and Budget.

410.007 Deviations.

HCA's are designated to authorize deviations as required by FAR 10.007 and are responsible for accomplishing the actions required by FAR 10.007. Copies of the applicable documents shall be provided to the Director, Office of Operations.

410.011 Contract clauses.

(a) The contracting officer shall insert the clause at 452.210-71, Statement of Work/Specifications, when the statement of work or specifications is included in Section J of the solicitation.

(b) The contracting officer shall insert the clause at 452.210-72, Attachment to Statement of Work/Specifications, when there are attachments to the statement of work or specifications.

[53 FR 6063, Feb. 29, 1988]

PART 411 [RESERVED]

PART 412—CONTRACT DELIVERY OR PERFORMANCE

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 412.1—Delivery or Performance Schedules

412.104 Contract clauses.

(a)(1) If the type of contract is a cost-plus-fixed fee, the contracting officer shall insert the clause at 452.212-70, Level of Effort—Cost Reimbursement Term Contract.

(2) If the type of contract is a cost or cost-sharing, the contracting officer shall use the clause with its Alternate I.

(3) If the type of contract is a cost-plus-incentive-fee, the contracting officer shall use the clause with its Alternate II.

(4) If the type of contract is a cost-plus-award-fee, the contracting officer shall use the clause with its Alternate III.

(b) The contracting officer shall insert the clause at 452.212-71, Task Orders, when task orders will be used in a cost-reimbursement term contract.

(c)(1) The contracting officer shall insert the clause at 452.212-72, Period of Performance, when it is necessary to specify a period of performance, beginning on the date of award, date of receipt of notice of award, or a specified date.

(2) The contracting officer shall insert the clause at 452.212-73, Effective Period of the Contract, when it is necessary to specify the effective period of the contract.

[53 FR 6063, Feb. 29, 1988]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 413.5—Purchase Orders

Sec.
413.505 Purchase order and related forms.
413.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
413.505-70 AD-744, Purchase Order-Invoice-Voucher.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12117, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 413.5—Purchase Orders

413.505 Purchase order and related forms.

413.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Form AD-838, Purchase Order, is prescribed for use by USDA in lieu of Optional Forms 347 and 348.

413.505-70 AD-744, Purchase Order-Invoice-Voucher.

(a) *Prescribed form.* Form AD-744, Purchase Order-Invoice-Voucher, is prescribed for use by USDA in lieu of Standard Form 44.

(b) *Restrictions on use.* Form AD-744 shall not be used unless all four conditions under FAR 13.505-3(b) are satisfied. Additionally, use is precluded for any of the following purposes:

(1) As a confirming purchase order;

(2) As an order under a Blanket Purchase Agreement;

(3) As a receipt for purchases paid in cash;

(4) As an order for acquiring goods or services from Government agencies; or

(5) As a substitute for cash purchases using imprest funds, unless funds are not available.

(c) *Accountability controls.* Form AD-744 shall be controlled and accounted for in accordance with the procedures established by the USDA National Finance Center.

[49 FR 12117, Mar. 28, 1984, and 50 FR 14197, Apr. 10, 1985, as amended at 51 FR 34566, Sept. 29, 1986]

PART 414—SEALED BIDDING

Subpart 414.2—Solicitation of Bids

Sec.
414.201 Preparation of invitations for bids.
414.201-6 Solicitation provision.

Subpart 414.4—Opening of Bids and Award of Contract

414.404-1 Cancellation of invitations after opening.
414.406 Mistakes in bids.
414.406-3 Other mistakes disclosed before award.
414.406-4 Mistakes after award.
414.407 Award.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 414.2—Solicitation of Bids

414.201 Preparation of invitations for bids.

[53 FR 6063, Feb. 29, 1988]

414.201-6 Solicitation provision.

The contracting officer shall insert the provision 452.214-70, Award by Lot, when multiple items are segregated into clearly identifiable lots and the contracting officer wants to reserve the right to award by item within a lot, if award in that manner would be advantageous to the Government.

[53 FR 6063, Feb. 29, 1988]

Subpart 414.4—Opening of Bids and Award of Contract

SOURCE: 49 FR 12117, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

414.404-1 Cancellation of invitations after opening.

HCA's are authorized to make the determinations under FAR 14.404-1 (c) and (e)(1).

[51 FR 34566, Sept. 29, 1986]

414.406 Mistakes in bids.

414.406-3 Other mistakes disclosed before award.

(a) Contracting offices shall send all cases of mistakes in bid described in FAR 14.406-3 (a), (b), and (d) through their HCA to the Director, Office of Operations, for an administrative determination. The Director, Office of Operations, shall submit all determinations to the Assistant General Counsel, Research and Operations Division, for approval.

(b) The HCA shall make the determination described in FAR 14.406-3(c). An HCA may redelegate this authority to a level no lower than the contracting officer. Each proposed determination is subject to the approval of the Assistant General Counsel, Research and Operations Division, or the appropriate Regional Attorney or Attorney-in-Charge, whoever routinely provides legal services for the contracting office.

(c) Doubtful cases that are to be submitted to the General Accounting Office for advance decision shall be submitted through the Director, Office of Operations.

414.406-4 Mistakes after award.

If a mistake in bid is disclosed after award, the contracting officer shall make a final determination in accordance with the provisions of FAR 14.406-4 (b) and (c) and shall coordinate each proposed determination with the Assistant General Counsel, Research and Operations Division, or the Regional Attorney-in-Charge, whoever routinely provides legal services to the contracting office. Such coordination shall, at a minimum, consist of the contracting officer providing the proposed determination and the case file to the appropriate legal officer for comment.

414.407 Award.

PART 415—CONTRACTING BY NEGOTIATION

Subpart 15.1—General Requirements for Negotiation

Sec.
415.103 Converting from sealed bidding to negotiation procedures.

Subpart 415.4—Solicitation and Receipt of Proposals and Quotations

415.407 Solicitation provisions.
415.408 Issuing solicitations.
415.411 Receipt of proposals and quotations.

Subpart 415.5—Unsolicited Proposals

415.504 Advance guidance.
415.506 Agency procedures.

Subpart 415.6—Source Selection

415.607 Disclosure of mistakes before award.
415.608 Proposal evaluation.
415.612 Formal source selection.

Subpart 415.8—Price Negotiation

415.804 Cost or pricing data.
415.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

Subpart 415.9—Profit

415.902 Policy.

Subpart 415.10—Preaward, Award and Postaward Notifications, Protests, and Mistakes

415.1070 Post-award conference.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12118, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 15.1—General Requirements for Negotiation

415.103 Converting from sealed bidding to negotiation procedures.

HCA's are authorized to make the determination to permit the use of negotiation to complete an acquisition following the cancellation of an invitation for bids. (See 414.404-1).

[51 FR 34566, Sept. 29, 1986]

Subpart 415.4—Solicitation and Receipt of Proposals and Quotations

415.407 Solicitation provisions.

(a)(1) The contracting officer shall insert a provision substantially the same as the provision at 452.215-71, Instructions for the Preparation of Technical and Business Proposals, when the request for proposals requires offerors to submit technical proposals and business proposals, including cost or pricing proposals.

(2) The contracting officer shall insert a provision substantially the same as Alternate I to the provision, when a contract for major facilities management or other major services is contemplated.

(b) The contracting officer shall insert the provision at 452.215-72, Amendments to Proposals, in solicitations which require the submittal of lengthy, complex technical proposals.

(c) The contracting officer shall insert a provision substantially the same as the provision at 452.215-73, Submission of Proposals, when a proposal must be submitted in various formats and quantities.

(d) The contracting officer shall insert the provision at 452.215-74, General Financial and Organizational Information, in solicitations for negotiated fixed-price or cost-reimbursement contracts.

(e) The contracting officer shall insert a provision substantially the same as the provision at 452.215-75, Definition of Labor Classifications, in cost-reimbursement solicitations which identify the disciplines and levels of expertise required to perform the effort. The requisitioning program office shall identify for the contracting officer the labor classifications that may appropriately apply. Paragraphs (c) and (d) of the clauses are examples only, which may be modified or deleted to accommodate the particular procurement.

[53 FR 6063, Feb. 29, 1988]

415.408 Issuing solicitations.

Solicitations involving classified information shall be issued as prescribed in Subpart 404.4.

415.411 Receipt of proposals and quotations.

Classified proposals and quotations shall be handled as prescribed in Subpart 404.4.

Subpart 415.5—Unsolicited Proposals

415.504 Advance guidelines.

HCA's are responsible for establishing advance guidelines as required by FAR 15.504 in accordance with contracting activities' missions and programs.

415.506 Agency procedures.

HCA's are responsible for establishing the procedures for control of unsolicited proposals required by FAR 15.506(a) and for designating the contact point required by FAR 15.506(b).

Subpart 415.6—Source Selection

415.607 Disclosure of mistakes before award.

The HCA with the concurrence of the Office of General Counsel is authorized to make the determination permitting proposal correction as required by FAR 15.607(c)(3).

415.608 Proposal evaluation.

HCA's or their designees are authorized to make the determinations to reject all proposals under the circumstances listed in FAR 15.608(b).

[53 FR 6063, Feb. 29, 1988]

415.612 Formal source selection.

(a) The HCA shall determine when a formal source selection process will be used and establish procedures for implementing the requirements of FAR 15.612.

(b) The HCA shall be the formal selection official for all negotiated contracts over $500,000.

(c) A copy of the established procedures shall be forwarded to the Director, Office of Operations.

Subpart 415.8—Price Negotiation

415.804 Cost or pricing data.

415.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

The HCA is authorized to waive the requirement for submission of certified cost or pricing data as allowed by FAR 15.804-3(i).

Subpart 415.9—Profit

415.902 Policy.

(a) USDA will use a structured approach to determine the profit or fee prenegotiation objective in acquisition actions that require cost analysis based on the profit analysis factors in FAR 15.905.

(b) The following types of acquisitions are exempt from the requirements of the structured approach, but the contracting officer shall comply with FAR 15.905-1 when analyzing profit for these contracts or actions:

(1) All actions which do not require cost analysis;

(2) Architect-engineer contracts;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee contracts; and

(7) Other professional services.

(c) In developing a profit or fee objective, the contracting officer shall comply with the requirements in FAR 15.903.

(d) When profit analysis is required, any amount proposed by the prospective contractor for the cost of money for facilities capital allowable under FAR 31.205-10 shall be deducted from the prenegotiation cost base objective before calculating the profit objective.

(e) The HCA is responsible for establishing procedures to ensure compliance with this subpart.

Subpart 415.10—Preaward, Award and Postaward Notifications, Protests, and Mistakes

415.1070 Post-award conference.

If a postaward conference is necessary and in the Government's interest, the contracting officer shall insert a clause substantially the same as the clause at 452.215-76, Post-Award Conference, in cost-reimbursement and fixed-price service contracts.

[53 FR 6063, Feb. 29, 1988]

PART 416—TYPES OF CONTRACTS

Subpart 416.2—Fixed-Price Contracts

Sec.
416.203 Fixed-price contracts with economic price adjustment.
416.203-4 Contract clauses.

Subpart 416.3—Cost-Reimbursement Contracts

416.301 General.
416.301-3 Limitations.
416.306 Cost-plus-fixed-fee contracts.

Subpart 416.4—Incentive Contracts

416.403 Fixed-price incentive contracts.
416.404 Cost-reimbursement-incentive contracts.
416.404-1 Cost-plus-incentive-fee contracts.
416.404-2 Cost-plus-award-fee contracts.
416.405 Contract clauses.
416.470 Solicitation provision.

Subpart 416.5—Indefinite Delivery Contracts

416.505 Contract clauses.
416.570 Solicitation provision.

Subpart 416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

416.603 Letter contracts.
416.603-2 Application.
416.603-4 Contract clauses.
416.670 Contract clauses.

Subpart 416.7—Agreements

416.702 Basic agreements.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12119, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 416.2—Fixed-Price Contracts

416.203 Fixed-price contracts with economic price adjustment.

416.203-4 Contract clauses.

An economic price adjustment clause based on cost indexes of labor or material may be used under the conditions listed in FAR 16.203-4(d) after approval by the Director, Office of Operations, and consultation with the Office of the General Counsel.

Subpart 416.3—Cost-Reimbursement Contracts

416.301 General.

416.301-3 Limitations.

(a) Determinations and findings authorizing the use of a cost-reimbursement type contract as described in FAR 16.302 through 16.306 shall be signed by the contracting officer after compliance with the limitations in FAR 16.301-3 and 16.404, as appropriate.

(b) Prepare determination and findings substantially in accordance with the following format:

DETERMINATION AND FINDINGS

Authority to Use Cost Reimbursement-Type Contract

I hereby find that:

(1) The (contracting activity name) proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is ($—) (if contract is CPFF type, insert, "plus a fixed fee of ($—) which is — percent of the estimated cost of fee").

(2) (Set forth facts and circumstances that show why it is impracticable to secure property or services of the kind or quantity required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.)

I hereby determine that:

On the basis of the above findings it is impracticable to secure the property or services of the kind or quality required without the use of (cost, cost-sharing, or cost-plus-a-fixed-fee) type of contract, or the (cost, cost-sharing, or cost-plus-a-fixed-fee) method of contracting is likely to be less costly than other methods.

Date:

(Signature)

416.306 Cost-plus-a-fixed-fee contracts.

The determinations and findings establishing the basis for application of the statutory fee limitation (see FAR 16.306(c)(2) and 15.903(d)) shall be signed by the contracting officer and may be combined with the determination and findings prescribed in FAR 16.301-3.

Subpart 416.4—Incentive Contracts

416.403 Fixed-price incentive contracts.

Determinations and findings authorizing the use of a fixed-price incentive contract as described in FAR 16.403-1 through 16.403-2 shall be signed by the contracting officer after compliance with the limitations in FAR 16.403(c), 16.403-1(c) and 16.403-2(c), as appropriate.

416.404 Cost-reimbursement-incentive contracts.

416.404-1 Cost-plus-incentive-fee contracts.

In accordance with 416.301-3, determinations and findings authorizing the use of a cost-plus-incentive-fee contract under FAR 16.404-1 shall be signed by the contracting officer after compliance with the limitations in FAR 16.404-1(c).

416.404-2 Cost-plus-award-fee contracts.

This section establishes USDA policy and procedures for awarding and administering cost-plus-award-fee (CPAF) type contracts.

(a) *Applicability.* (1) Contracting officers should consider those contract actions which conform to the use criteria at FAR 16.404-2(b) and which have a potential value of $5,000,000 or more as candidates for award as a CPAF contract. However, contracting officers may use CPAF contracts for requirements whose estimated value is less than $5,000,000.

(2) The formal procedures established in paragraphs (e), (f), and (g) of this section apply to contracts estimated to exceed $1,000,000. The simplified procedures prescribed in paragraph (h) of this section are authorized for CPAF contracts with a potential value of $1,000,000 or less.

(b) *Objectives.* The award fee contract, when properly applied, will satisfy three critical contracting objectives:

(1) It provides for the reimbursement of allowable, allocable, and reasonable costs;

(2) It fixes a dollar amount beyond the initial estimate of costs that represents the compensation for risk (base fee); and

(3) It motivates performance throughout the life of a contract where evaluated success can yield additional income (award fee).

The CPAF contract is used when the work to be performed is such that specific quantitative objective measurement is not feasible and the required performance extends over a sufficient period of time for the award fee features to be used effectively.

(c) *Fee limitations.* Normally, the base fee should be not more than three percent of the estimated cost of the contract. (See FAR 15.903(d) for maximum fee limitations.) At the time of award, the contracting officer shall obligate the total amount of base and award fee. The contracting officer shall award the total award fee earned for the period being evaluated. The contracting officer shall not carry forward into a subsequent evaluation period any award fee not awarded in a previous evaluation period.

(d) *Definitions and responsibilities.* "Award fee plan" means a plan, developed by the Performance Evaluation Board (PEB), which identifies various categories of performance and clearly describes the criteria used by the PEB to evaluate contractor performance. The plan also allocates the award fee pool among performance categories.

"Award fee pool" means that portion of the contract fee set forth in the contract as the amount of fee available to be awarded for Contractor performance in accordance with the criteria contained in the award fee plan.

"Evaluation coordinator" means a Government official appointed to receive, code, validate, and assess performance event reports; and to present such contractor performance information and data to the PEB.

"Fee determination official (FDO)" means the Chief of the contracting office who reviews the recommendation of the PEB and makes the final determination of the award fee.

"PEB executive secretary" means a Government official who prepares the official PEB report.

"Performance evaluation board (PEB)" means a board of Government officials, which performs the in-depth review of all aspects of contractor performance and recommends an appropriate fee to the FDO.

"Performance event (PE)" means a discrete happening or series of related happenings occurring during the course of performance which indicate or represent contractor performance. Performance events shall be reported by the performance monitors to the evaluation coordinator. The contractor may report performance events directly to the evaluation coordinator either as they occur or as a summary report for the evaluation period.

"Performance monitors" means those Government employees designated to observe, assess, and report the performance of the contractor on a close, continuous day-to-day basis. Performance monitors are to two categories: technical and business. The technical performance monitors report on the contractors performing the technical requirements of the contract. The business performance monitors report on the business aspects of the contractor's performance; these individuals will be the contracting officer and cost analyst most familiar with the specific contractual and financial aspects of the contract.

"Period of evaluation" means a segment of the contract's period of performance specified in the award fee plan which will be evaluated by the PEB for purposes of establishing the award fee for that period.

(e) *Appointment of personnel.* (1) The HCA will determine, in concert with the responsible program office, the participants in the award fee process. The contracting officer shall prepare the formal appointment memorandum and forward it to the HCA prior to issuance of the solicitation. Individuals shall be designated as follows:

(i) *Chairperson, Performance Evaluation Board and Board Members.* The Chairperson of the performance evaluation board shall be the director of the program initiating the procurement. A representative of the responsible contracts operation office shall be a voting member of all PEB's. The chairperson of the PEB and the contracting officer shall recommend other board members.

(ii) *Evaluation Coordinator.* As recommended by the chairperson of the PEB.

(iii) *Executive Secretary.* As recommended by the chairperson of the PEB.

(iv) *Performance Monitors.* The PEB chairperson shall assure that adequate performance monitoring capability is available. These individuals need not be designated in the appointment memorandum.

(2) If any changes in the composition of the PEB are necessary, the following approvals shall be obtained:

(i) Chairperson, PEB—by the FDO.

(ii) PEB members—by the Chairperson, PEB.

(f) *Preparation of the award fee plan.* The purpose of the award fee plan is to describe in one document the plan for monitoring, assessing, and evaluation contractor performance to determine any award fee earned. The PEB shall develop and follow an award fee plan which clearly describes the criteria to be used to determine fee. The PEB shall forward the plan through the contracting officer to the HCA for approval prior to issuance of the solicitation. The contracting officer shall include the award fee plan in the solicitation. A complete award fee plan should include the following elements:

(1) The base fee amount.

(2) The total award fee pool.

(3) Performance areas to be evaluated.

(4) Criteria to be used in evaluations.

(5) Relative weights to be assigned to performance areas and to the evaluation criteria.

(6) Frequency and timing of award fee determination.

(7) Proportion of the total award fee pool to be available for each evaluation period.

(8) Procedure to be followed (the timing involved) in evaluating performance and determining the award fee.

(g) *Operation of the evaluation system*—(1) *Performance event reporting.* Performance monitors shall file their individual performance event reports directly with the evaluation coordinator for each interval specified in the award fee plan and in the following or similar format.

(i) Contract number.

(ii) Contractor.

(iii) Task order number (if applicable).

(iv) Date or inclusive period of reported event.

(v) Performance evaluation category.

(vi) Description of performance event and statement whether the contractor has been notified of the reported event.

(vii) Performance rating:

(A) Superior: "+" The performance event exceeds the satisfactory level.

(B) Satisfactory: "0" The performance event is acceptable.

(C) Substandard: "−" The performance event is less than satisfactory.

(viii) Signature and date.

(2) *Significant performance event coordination.* (i) The evaluation coordinator shall receive, validate, and assess the performance events (PE) reports submitted by the monitors and select all those PE's he/she considers to be significant, i.e., above (+) or below (−) satisfactory performance.

(ii) The evaluation coordinator shall also prepare separate PE summaries for each performance evaluation category. The summaries will incorporate the reported PE's which the coordinator considers significant, whether reported by the performance monitor or the contractor. The evaluation coordinator shall be responsible for preparing and presenting all material the PEB requires for its performance assessment. This material will serve as the PEB's agenda, and as the complete documentation package which will support the PEB's fee recommendation. It will be organized into separate sections for each performance evaluation category. Each section will consist of the following material:

(A) Summary of significant performance events, and

(B) The individual PE reports.

(3) *Evaluation of performance.* The PEB shall perform a review of the performance events against each performance evaluation category to arrive at the recommended award fee for each category as well as the total award fee for the period. The PEB must meet within 30 calendar days after the end of each evaluation period. At the initial PEB meeting the board members shall determine what fee the contractor would normally receive if the work was being undertaken on a Cost-Plus-Fixed-Fee (CPFF) basis. After determining this amount, the PEB shall determine what percentage of the available award fee pool that, when added to the base fee, will equal the amount the contractor would receive under a CPFF contract. This percentage of award fee will set the baseline for satisfactory performance.

(4) *The period of evaluation.* The period of evaluation will be at least every six months. The desired period of evaluation will be every four months.

(5) *Performance evaluation report.* Following the PEB meeting at which the award fee recommendation is reached, the executive secretary will prepare a performance evaluation report and forward this to the contracting officer. The contracting officer will prepare a letter for signature of the FDO informing the contractor's general management of the amount of basis of the fee awarded. The contracting officer shall forward the performance evaluation report and the fee determination letter (the performance evaluation report shall be an attachment to the fee determination letter) to the FDO for signature. The FDO will review the performance evaluation and fee recommendation and make a final determination of fee.

(h) *Simplified procedures.* The following CPAF procedures are authorized for procurements of $1,000,000 or less.

(1) No appointment of a formal PEB is necessary. A program office representative and the contracting officer shall perform the duties and functions of the PEB members. In lieu of performance monitors reporting to an evaluation coordinator, the program official will personally monitor and assess the technical performance of the contractor for each evaluation period. The contracting officer will monitor the business aspects of the contractor's performance.

(2) The chief of the contracting office shall approve the award fee plan in lieu of the HCA.

(3) The project officer and the contracting officer shall report performance events in the format described in 416.404-277(a)(1). Use of the summary of significant performance events is not required.

(4) The project officer, with input from the contracting officer, will prepare the performance evaluation report.

[53 FR 6063, Feb. 29, 1988]

416.405 Contract clauses.

The contracting officer shall insert a clause substantially the same as the clause at 452.216-70, Award Fee, in solicitations and contracts which contemplate the award of cost-plus-award-fee contracts.

[53 FR 6065, Feb. 29, 1988]

416.470 Solicitation provision.

The contracting officer shall insert the provision at 452.216-71, Base Fee and Award Fee Proposal in solicitations which contemplate the award of a cost-plus-award-fee contract.

[53 FR 6065, Feb. 29, 1988]

Subpart 416.5—Indefinite Delivery Contracts

416.505 Contract clauses.

The contracting officer shall insert the clause at 452.216-73, Minimum and Maximum Contract Amounts, in indefinite-delivery, indefinite-quantity contracts when the clause at FAR 52.216-18 is used.

[53 FR 6065, Feb. 29, 1988]

416.570 Solicitation provision.

The contracting officer shall insert a provision substantially the same as the provision at 452.216-72, Evaluation

Quantities—Indefinite-Delivery Contract, in solicitations which contemplate the award of indefinite-quantity or requirements contracts to establish the basis on which offers will be evaluated.

[53 FR 6065, Feb. 29, 1988]

Subpart 416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

416.603 Letter contracts.

416.603-2 Application.

The HCA or a designee is authorized to extend the period for definitization of a letter contract required by FAR 16.603-2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

[49 FR 12119, Mar. 28, 1984, as amended at 50 FR 14198, Apr. 10, 1985]

416.603-4 Contract clauses.

The contracting officer shall insert the clause at 452.216-75, Letter Contract, in a definitive contract superseding a letter contract.

[53 FR 6065, Feb. 29, 1988]

416.670 Contract clauses.

The contracting officer shall limit the Government's obligation under a time-and-materials or labor-hour contract by inserting the clause at 452.216-74, Ceiling Price.

[53 FR 6065, Feb. 29, 1988]

Subpart 416.7—Agreements

416.702 Basic agreements.

Promptly after execution by the Government, the HCA shall furnish to the Director, Office of Operations, a copy of each basic agreement negotiated with a contractor in accordance with FAR 16.702.

[50 FR 14198, Apr. 10, 1985]

PART 417—SPECIAL CONTRACTING METHODS

Subpart 417.2—Options

Sec.
417.208 Solicitation provisions and contract clauses.

Subpart 417.4—Leader Company Contracting

417.402 Limitations.

Subpart 417.5—Interagency Acquisitions Under the Economy Act

417.502 General.

Subpart 417.6—Management and Operating Contracts

417.602 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12120, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 417.2—Options

417.208 Solicitation provisions and contract clauses.

(a) If the Government needs additional periods of contractor performance, the contracting officer shall insert a clause substantially the same as the clause at 452.217-70, Option to Extend the Term of the Contract—Cost-Plus-Fixed-Fee Contract, in term (level-of-effort) contracts. Alternate I of the clause is for use in completion contracts.

(b) If the Government needs additional periods of contractor performance, the contracting officer shall insert a clause substantially the same as the clause at 452.217-71, Option to Extend the Term of the Contract—Cost-No-Fee Contract, in term (level-of-effort) contracts. Alternate I of the clause is for use in completion contracts.

(c) If the Government needs additional periods of contractor performance, the contracting officer shall insert a clause substantially the same as the clause at 452.217-72, Option to Extend the Term of the Contract—Cost-Plus-Award-Fee Contract, in level-of-effort contracts. Alternate I is to be used for completion contracts.

(d) If the Government needs additional quantities, the contracting officer shall insert a clause substantially the same as the clause at 452.217-73, Option for Increased Quantity—Cost-Plus-Fixed-Fee Contracts, in level-of-effort contracts.

(e) If the Government needs additional quantities, the contracting officer shall insert a clause substantially the same as the clause at 452.217-74, Option for Increased Quantity—Cost-Plus-Fixed-Fee Contract, in level-of-effort contracts.

(f) If the Government needs additional quantities, the contracting officer shall insert a clause substantially the same as the clause at 452.217-75, Option for Increased Quantity—Cost-Plus-Award-Fee Contract, in level-of-effort contracts.

(g) If the Government needs additional periods of contractor performance, the contracting officer shall insert a clause substantially the same as the clause at 452.217-76, Option to Extend the Effective Period of the Contract—Time-and-Materials or Labor-Hour Contract, in time-and-materials or labor-hour contracts.

(h) If the Government needs additional periods of contractor performance, the contracting officer shall insert a clause substantially the same as the clause at 452.217-77, Option to Extend the Effective Period of the Contract—Indefinite-Delivery/Indefinite-Quantity Contract, in indefinite-delivery and indefinite-quantity contracts.

(i) If the Government needs additional periods of contractor performance, the contracting officer shall insert a clause substantially the same as the clause at 452.217-78, Option to Extend the Term of the Contract—Fixed-Price Contract, in fixed price contracts.

(j) If the Government needs additional quantities, the contracting officer shall insert a clause substantially the same as the clause at 452.217-79, Option for Increased Quantity—Fixed-Price Contract, in fixed-price contracts.

[53 FR 6065, Feb. 29, 1988]

Subpart 417.4—Leader Company Contracting

417.402 Limitations.

The HCA shall authorize the use of leader company contracting procedures in FAR Subpart 17.4.

Subpart 417.5—Interagency Acquisitions Under the Economy Act

417.502 General.

The HCA shall establish procedures for making interagency acquisitions under the Economy Act. The determination required by FAR 17.502 shall be made at a level above the contracting officer.

[50 FR 14198, Apr. 10, 1985]

Subpart 417.6—Management and Operating Contracts

417.602 Policy.

(a) The Assistant Secretary for Administration shall make the determination to enter into or renew any management and operating contracts as prescribed in FAR 17.602(a).

(b) Written determinations shall be prepared for the Assistant Secretary's signature and submitted by the HCA to the Director, Office of Operations, for action. The determination shall be submitted prior to solicitation for the requirement and shall:

(1) Reference the statutory authority for awarding a management and operating contract;

(2) Discuss the relationship between the requirement and the limitations in FAR 17.603;

(3) Include a copy of the solicitation document including evaluation criteria;

(4) If non-competitive acquisition is proposed, include a copy of the justification.

(c) The HCA shall be responsible for conducting the reviews required by FAR 17.602(c).

PART 418—[RESERVED]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 419.2—Policies

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419.201-70 Office of Small and Disadvantaged Business Utilization (OSDBU).
419.201-71 OSDBU coordinators.
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Subpart 419.4—Cooperation With the Small Business Administration

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419.508 Solicitation provisions.

Subpart 419.6—Certificates of Competency and Determinations of Eligibility

419.602 Procedures.
419.602-1 Referral.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12120, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 419.2—Policies

419.201 General policy.

419.201-70 Office of Small and Disadvantaged Business Utilization (OSDBU).

The Office of Small and Disadvantaged Business Utilization shall develop policy, procedures and guidelines for the effective administration of the Department's small and disadvantaged business procurement preference program to include minority and women-owned businesses. OSDBU shall also evaluate contracting activity accomplishments, objectives and procedures with respect to these programs, and recommend corrective actions for program improvement. The HCA's and Departmental staff office directors whose programs generate requirements for contract actions shall administer the Department's procurement preference program within their organizations. This responsibility may be delegated to ensure program effectiveness.

419.201-71 OSDBU coordinators.

HCA's shall designate an OSDBU Coordinator in each contracting office. In addition, Departmental staff office directors whose programs generate contracts shall designate an OSDBU Coordinator. OSDBU Coordinators shall take positive actions which will maximize contracting opportunities for small businesses, including minority and women-owned businesses. The amount of time required for the performance of functions concerning this program shall be directly related to the number and dollar value of contract awards made in each office. In addition to their regular assigned duties, it is anticipated that about 20 percent of their time should be spent as OSDBU Coordinators. Supervisors of OSDBU Coordinators are encouraged to provide time for the coordinators to perform this important function. The duties and responsibilities of the OSDBU Coordinators shall include, but not be limited to, the following:

(a) Review each proposed acquisition expected to exceed $10,000 prior to its solicitation. The Coordinator shall:

(1) Recommend section 8(a) action and identify potential contractors, or

(2) Identify available minority and women-owned businesses to be solicited by competitive procedures. Coordinators shall document the contract file with recommendations made and actions taken.

(b) Participate in goal-setting procedures and planning activities as described in 419.201-72.

(c) Ensure that the subcontracting clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," as prescribed in FAR 19.708, is included in applicable solicitations. The coordinator shall participate in the review of those contracts which require the successful offeror to submit written plans for the utilization of small and small disadvantaged businesses as subcontractors.

(d) Ensure that small purchases (under $10,000) are reserved exclusively for small businesses, including minority and women-owned businesses as prescribed by FAR 13.105 and 19.508. This policy shall be implemented unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased.

(e) Maintain comprehensive source listings of small, minority and women-owned businesses and utilize SBA's Procurement Automated Source System (PASS) and the National Minority Purchasing Council's Vendor Information Service to build and maintain these listings. Ensure that all small, minority and women-owned businesses seeking to do business are informed of the bid and proposal submission requirements, and of financial, management and technical assistance programs offered by SBA and the Minority Business Development Agency. Ensure that these firms, upon request, are directed to appropriate program and project personnel.

(f) Upon written request, provide small, minority and women-owned businesses the bidders mailing lists of individuals receiving solicitations which will contain the subcontracting clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns." These lists may be limited to those supplies or services of major interest to the requesting firms.

(g) Develop a program of contacts with local, small, minority, and women-owned trade, business, and professional associations and organizations and Indian tribal councils to apprise them of the Department's program needs and recurring contract requirements.

(h) Actively participate in the programs and activities of the local Minority Business Opportunity Committees (MBOC) and assist the Minority Business Development Centers (MBDC), where applicable. Become aware of and participate in locally sponsored workshops, conferences, trade fairs, etc., which are held to apprise small, minority and women-owned firms about current and projected contracting opportunities.

(i) Periodically meet with program managers to discuss the section 8(a), small, minority and women-owned business programs and the impact which their requirements can have to achieve progress. Explore the feasibility of breaking large complex requirements into smaller lots suitable for participation by small, minority and women-owned firms. Encourage program managers to meet with these firms so that their capabilities can be demonstrated.

(j) Establish internal operating procedures which implement the requirements of the regulations as set forth in this Part 419. Compile data and prepare all reports pertaining to the small, minority and women-owned business activities. Ensure that these reports are accurate, complete and up-to-date.

[49 FR 12120, Mar. 28, 1984, as amended at 50 FR 14198, Apr. 10, 1985]

419.201-72 Goals.

(a) The Department is required by Pub. L. 95-507, Section 221, Executive Order 12138 (May 18, 1979) and Executive Order 12073 (August 16, 1978) to establish fiscal year goals for the procurement preference programs. Goals shall be reviewed and approved by the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). HCA's and staff office directors whose programs generate contract requirements shall submit to the Director, OSDBU, the following data no later than August 1 of each fiscal year:

(1) An estimate of the total dollar amount of all prime contracts regardless of dollar value to be awarded during the fiscal year, including awards to non-profit organizations, educational institutions, all transportation services and real property

leases. Do not include foreign military sales, contracts to be awarded and performed entirely outside the United States and Federal Supply Schedule orders;

(2) An estimate of the total dollar value of all prime contracts having a value of $10,000 or more to be awarded during the fiscal year, including contracts to non-profit organizations, educational institutions, all transportation services and real property leases. Do not include foreign military sales, contracts to be awarded and performed entirely outside the United States and Federal Supply Schedule orders;

(3) A goal for prime contract awards valued at $10,000 or more to be made to small business concerns during the fiscal year, expressed in dollars and as a percentage of paragraph (a)(2) of this section;

(4) A goal for prime contract awards to be made to the Small Business Administration under the authority of Section 8(a) of the Small Business Act, as amended, expressed in dollars and as a percentage of paragraph (a)(1) of this section;

(5) A goal for prime contract awards valued at $10,000 or more to be made to small business concerns owned and controlled by socially and economically disadvantaged individuals, expressed in dollars and as a percentage of paragraph (a)(2) of this section;

(6) A goal for prime contract awards to be made to small business concerns owned and controlled by women, expressed in dollars and as a percentage of paragraph (a)(1) of this section;

(7) A goal for prime contract awards to business concerns in Labor Surplus Areas (LSA) on the basis of set-asides, expressed in dollars and as a percentage of paragraph (a)(1) of this section. (This includes all categories of LSA set-asides authorized by Pub. L. 96-302);

(8) An estimate of the total dollar amount of subcontracts to be awarded by "reporting prime contractors" (as identified in Standard Form 295) during the fiscal year;

(9) A goal for subcontracts to be awarded by prime contractors to small business concerns, expressed in dollars and as a percentage of paragraph (a)(8) of this section; and

(10) A goal for subcontracts to be awarded by prime contractors to small business concerns owned and controlled by socially and economically disadvantaged individuals, expressed in dollars and as a percentage of paragraph (a)(8) of this section.

(b) The information developed in paragraph (a) shall include a detailed written presentation of the method used to establish the estimates and goals submitted pursuant to paragraphs (a) (1) through (10) of this section, along with copies of the historical, empirical data upon which the estimates and goals are based. Information about the types, kinds and amounts of goods and services brought and the numbers and types of contracts involved in the estimates submitted pursuant to paragraphs (a) (3) through (10) of this section is required. This information is needed to realistically evaluate the estimates and the goals related thereto. In establishing subcontracting goals, identification and justification should be provided for each class of contracts and the projected total value thereof determined to have little or no subcontract possibilities. Similarly, in establishing goals for prime contract awards to small or small disadvantaged firms, contracts which have no potential for award to such firms, including the projected value thereof, should be identified.

(c) All goals are expressed in terms of dollars and percentages. However, if there is any significant variance, up or down, from the estimates in paragraph (a) (1) or (2) of this section, upon which the goals are established, the percentage goal is the controlling factor and will be used to measure actual attainment.

(d) Section 221 of Pub. L. 95-507 reserves all small purchases with certain exceptions for small business and requires that goals be established for awards over $10,000 to small and small disadvantaged business. Thus, the goals under paragraphs (a) (3) and (5) of this section do not include awards under $10,000.

(e) Fiscal year goals are expected to reflect measurable improvement over an agency's performance in the previous fiscal year. Justification for establishing a goal lower than the achievement attained should be documented in accordance with paragraph (b) of this section.

[49 FR 12120, Mar. 28, 1984, as amended at 50 FR 14198, Apr. 10, 1985]

419.201–73 Reports.

(a) The Director, OSDBU, shall be responsible for submitting reports concerning the Department's progress and achievements in the procurement preference program. Data for these reports shall be obtained from the USDA Procurement Reporting System (UPRS). Subcontracting data, however, cannot be retrieved from UPRS and shall be reported in accordance with paragraph (b) of this section.

(b) Contracting activities shall collect, summarize, and submit subcontracting data elements to the Director, OSDBU. The data are to be reported quarterly for other than commercial products and annually for commercial products for contract awards in excess of $500,000 ($1 million for construction). Reports shall be submitted each quarter in the format of the Standard Form 295. An additional data form will be required in the fourth quarter for the annual report on commercial products. To ensure accurate and timely reporting, contracting activities shall perform the following:

(1) Submit the SF-295 on a contractor-by-contractor basis 30 calendar days following the end of the first, second, and third quarters and 45 days following the end of the fourth quarter.

(2) Edit all forms (data) prior to their submission. Forms must be completed in all fields of the "Cumulative Commitments" and "Subcontract Goal Achievement." OSDBU will not assume that a blank field is a zero. Forms not fully completed will be returned. Contracting officers should communicate with the prime contractor's representative to ensure that consistent, accurate and timely data are submitted.

(3) In the "Cumulative Commitment" block, many contractors are reporting each quarter only those awards occurring in that quarter. OSDBU will return quarterly reports on which the awards reported are less than those submitted on the previous quarter of the same fiscal year. Totals must add up to exactly 100 percent. The sum of line 9 must be the sum only of lines 9a and 9b. All dollar figures should be in whole numbers and not in thousands.

(4) In the "Subcontract Goal Achievement" block, the column headed "No. of Contracts" must reflect the number of contracts and subcontracts valued over $500,000 ($1 million for construction) which have subcontracting plans and goals. Delete the three zeros (000) in the "$ Value of Subcontracts" column. The percentage of actual goal achievement reported on line 12b must always be 100 percent or higher and on line 12c must always be lower than 100 percent. The same applies for lines 13b and 13c.

(5) Items in lines 12 and 13 do not apply to company-wide annual subcontracting plans for commercial products. Accomplishments for these type plans are reported in line 14. The information reported must summarize all Federal contracts for commercial products performed during the year and the share of the total attributable to USDA from which contracts for such commercial products were received.

(c) Explanatory comments concerning shortfalls in meeting procurement preference program goals established in accordance with 419.201-72 shall be summitted to the Director, OSDBU. Reports may be submitted in a narrative format and shall contain appropriate justifications for the goal shortfall(s). Achievements shall be based upon official AD-760 and SF-281 data as recorded in UPRS. Reports shall be submitted no later than November 20 of each fiscal year.

419.202 Specific policies.

419.202–70 Specific policies relating to small businesses.

OSDBU Coordinators shall take positive actions to ensure maximum participation of small business concerns in proposed acquisitions. These actions shall include:

(1) Developing a plan of operation to increase the share of contracts awarded to small business and LSA concerns;

(2) Reviewing the types and classes of items and services to be purchased to determine the applicability of small business and LSA set-aside priorities prescribed in 419.504(a);

(3) Developing adequate small business and/or LSA competition on all appropriate contract requirements;

(4) Making maximum utilization of SBA's Procurement Automated Source System (PASS) when considering contract requirements;

(5) Ensuring that specifications are not restrictive, thereby enabling small business participation;

(6) Assisting and counseling small business firms and especially those found to be nonresponsive or nonresponsible to help qualify them for future awards;

(7) Reviewing proposed large contract requirements to determine the potential for breaking out components suitable for purchase from small business firms or LSA concerns; and

(8) Ensuring that the SBA Resident Procurement Center Representative (PCR) is provided an opportunity and reasonable time to review any solicitation that meets the dollar threshold for small business and small disadvantaged business subcontracting plans.

419.202-71 Specific policies relating to minority, disadvantaged, and women-owned businesses.

OSDBU Coordinator shall take positive action to ensure maximum participation of minority business enterprises, including women-owned, in proposed acquisitions. These actions shall include:

(a) Establishing aggressive minority and women-owned business goals based on the annual review of advance acquisition plans. These goals shall be submitted in accordance with 419.201-72.

(b) Attempting to direct those contracting requirements to the 8(a) program which match the abilities of the minority contractors located in the area where the contract will be performed.

(1) Recurring requirements should not be assigned to the 8(a) program, without consulting SBA, when small businesses are dependent in whole or in significant part on such Government requirements. However, this does not mean that a segment of a requirement could not be assigned to the 8(a) program.

(2) The SBA publication "Firms in the 8(a) Business Development Program" should be used as an aid in locating eligible contractors.

(3) Field personnel should be encouraged to locate and contact minority contractors for possible 8(a) participation. These contractors should be directed to the nearest District or Regional Office of SBA to make application for certification.

(c) Fully utilizing available minority and women-owned vendor listings, directories and query systems to ensure that eligible and qualified minority and women-owned business enterprises are included on bidders mailing lists and source lists.

(d) Nominating OSDBU Coordinators for appointment by the HCA at each contracting office. Duties of these coordinators shall be in accordance with 419.201-71.

(e) Providing training opportunities for all personnel involved in carrying out the Department's minority and women-owned business enterprise program.

(f) Preparing plans for the utilization of minority and women-owned business enterprises. These plans may be in the form of standard operating procedures, and they are to be followed by all personnel involved in carrying out this program.

Subpart 419.4—Cooperation With the Small Business Administration

419.402 Small Business Administration procurement center representatives.

(a) SBA has assigned a full-time Procurement Center Representative (PCR) to USDA procuring agencies located in the metropolitan Washington, DC area. A part-time PCR also has been assigned to the ASCS Kansas City Field Office (KFO), Kansas City, MO. PCR responsibilities are described in FAR 19.402.

(b) Acquisition offices in the metropolitan Washington, DC area and the KFO shall notify and make available for review by the PCR all proposed acquisitions in excess of $10,000 that have not been unilaterally set aside for small business (see FAR 19.501(c)). This action shall be taken prior to announcement of the acquisition in the Commerce Business Daily or before public solicitation of offers.

[50 FR 14198, Apr. 10, 1985]

Subpart 419.5—Set-Asides for Small Business

419.506 Withdrawing or modifying set-asides.

Disagreements between the contracting officer and OSDBU Coordinator concerning withdrawals or modifications of individual or class set-asides shall be forwarded to the HCA for resolution. The OSDBU Coordinator shall provide timely notification of such disagreements to the OSDBU in order to afford them an opportunity to provide assistance in resolving the dispute.

419.508 Solicitation provisions.

The contracting officer shall insert the provision at 452.219-70, Set-Aside/Size Standard Information, in solicitations that are set-aside for small businesses or labor surplus area concerns.

[53 FR 6066, Feb. 29, 1988]

Subpart 419.6—Certificates of Competency and Determinations of Eligibility

419.602 Procedures.

419.602-1 Referral.

Contracting officers shall refer determinations of non-responsibility regarding small businesses directly to the SBA Regional Office servicing the location where the contractor's office (home) is located. This referral shall consist of the documents described in FAR 19.602-1(c).

PART 420—LABOR SURPLUS AREA CONCERNS

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 420.1—General

420.170 Labor surplus area performance and goals.

(a) Construction and other "site-specific" contract requirements are applicable to labor surplus area set-asides. Contracts which are restricted to labor surplus area concerns shall be recorded in fulfillment of labor surplus area goals.

(b) Contracts awarded under priorities (1), (3) and (5) of FAR 19.504(a) shall be recorded in fulfillment of labor surplus area goals. Contracting activities shall not record noncompetitive 8(a) contracts, purchases from blind and handicapped workshops, and purchases from Federal Prison Industries toward their LSA goals. However, contracts may be counted toward LSA goals whenever there is competition among firms in labor surplus areas which are also in the 8(a) Program.

(c) Small business-small purchase set-asides accomplished under the procedures in FAR 13.105 shall be counted toward fulfillment of LSA goals. The clause requiring firms to perform as LSA concerns shall be included in the purchase order or other purchase document. In addition, the following statement should be included in the SF-18, when applicable: "This request is restricted to small business (and labor surplus area firms)." The contracting officer shall document a firm's acceptance of the LSA provisions whenever solicitations are conducted orally.

(d) LSA goals shall be established in accordance with the provisions of 419.201-72.

[49 FR 12123, Mar. 28, 1984, and 50 FR 14197, Apr. 10, 1985]

PART 421—[RESERVED]

PART 422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 422.1—Basic Labor Policies

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422.1403 Waivers.
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Subpart 422.70—Service Contract Act of 1965

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422.7003 Clauses for contracts over $2,500.
422.7004 Notice of intention to make a service contract.
422.7005 Hearings.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12123, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 422.1—Basic Labor Policies

422.103 Overtime.

422.103-4 Approvals.

Requests for the use of overtime shall be approved at a level above the contracting officer in accordance with the procedures in FAR 22.103-4.

Subpart 422.6—Walsh-Healy Public Contracts Act

422.604 Exemptions.

422.604-2 Regulatory exemptions.

The Assistant Secretary for Administration can request the Secretary of Labor to exempt contracts from the Walsh-Healy Public Contracts Act pursuant to FAR 22.604-2(c). A written finding justifying the request for exemption shall be prepared for the Assistant Secretary's signature and submitted by the HCA to the Director, Office of Operations, for referral to the Assistant Secretary.

422.608 Procedures.

422.608-4 Award pending final determination.

The HCA is delegated authority to approve the contracting officer's certification for award required by FAR 22.608-4.

Subpart 422.8—Equal Employment Opportunity

422.803 Responsibilities.

The contracting officer shall submit questions involving the applicability of EO 11246 and FAR Subpart 22.8 through the HCA to the Director, Office of Operations, for resolution.

422.804 Affirmative action programs.

422.804-2 Construction.

The HCA shall ensure that each contracting office awarding nonexempt construction contracts maintains a current listing of covered geographical areas subject to affirmative action requirements specifying goals for minorities and women in covered construction trades.

422.805 Procedures.

(a) The contracting officer shall submit requests for preaward reviews directly to the appropriate OFCCP regional office in accordance with FAR 22.805(a) (4) and (5).

(b) The contracting officer shall obtain copies of the poster "Equal Opportunity is the Law" (OFCCP 1420), from the nearest regional GSA supply depot using stock NO. 769000-926-8988.

422.807 Exemptions.

(a) The Assistant Secretary for Administration is authorized to make the determination in FAR 22.807(a)(1) that a contract is essential to the national security.

(b) The contracting officer shall submit request for exemptions under FAR 22.807(a)(1), (a)(2), and (b)(5) through the HCA to the Director, Office of Operations, for determination by the Assistant Secretary for Administration or referral to the Director, OFCCP, as appropriate.

Subpart 422.13—Special Disabled and Vietnam Era Veterans

422.1303 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determination under FAR 22.1303(a), and under FAR 22.1303(b) with concurrence of the Director, OFCCP.

(b) The contracting office shall submit requests for waivers through the HCA to the Director, Office of Operations.

422.1306 Complaint procedures.

The contracting officer shall forward complaints received about the administration of the Vietnam Era Veterans Readjustment Assistance Act of 1972 directly to the DOL as prescribed in FAR 22.1306.

Subpart 422.14—Employment of the Handicapped

422.1403 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determinations under FAR 22.1403(a), and under FAR 22.1403(b) with concurrence of the Director, OFCCP.

(b) The contracting officer shall submit requests for waivers through the HCA to the Director, Office of Operations.

422.1406 Complaint procedures.

The contracting officer shall forward complaints received about the administration of Section 503 of the Rehabilitation Act of 1973, as amended, directly to the OFCCP as prescribed in FAR 22.1406.

Subpart 422.70—Service Contract Act of 1965

SOURCE: 53 FR 6066, Feb. 29, 1988, unless otherwise noted.

422.7001 Applicability.

(a) *General.* Pending coverage in the FAR, the policies and procedures in the Federal Procurement Regulations (FPR) Subpart 1-12.9, Service Contract Act of 1965, as amended by the FPR Temporary Regulation 76, Revision of Labor Standards for Federal Service Contracts, February 23, 1984, must be followed in acquisitions of services. This Subpart 422.70 implements the essential elements of the FPR Temporary Regulation 76 and includes the major changes to the Department of Labor (DOL) regulations, dated October 19, 1983.

(b) *Request for determinations and exemptions.* The HCA shall direct requests for determinations regarding the applicability of the Service Contract Act and requests for exemptions from the Act to the Wage and Hour Administrator.

422.7002 Clause for contracts of $2,500 or less.

The contracting officer shall insert the clause at 452.222-70, Service Contract Act of 1965-Contracts of $2,500 or less, in solicitations and contracts if the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 applies.

422.7003 Clauses for contracts over $2,500.

(a) The contracting officer shall insert the clause at 452.222-71, Service Contract Act of 1965, as amended, in solicitations and contracts if the contract is subject to the Service Contract Act of 1965 and is—

(1) Expected to exceed $2,500 or

(2) For an indefinite dollar amount and the contracting officer expects the contract amount to exceed $2,500 during any 12-month period.

(b) The contracting officer shall insert the clauses at 452.222-72, Statement of Equivalent Rates for Federal Hires and 452.222-73, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed price service contract containing the clause at 452.222-71, Service Contract Act of 1965 (as amended), that exceeds the small purchase limitation. The clause at 452.222-73 is optional for small purchases.

422.7004 Notice of intention to make a service contract.

(a) The Department of Labor (DOL) has issued a Service Contract Act Directory of Occupations to use in determining job classifications when procuring services. The directory contains occupational titles and descriptions that contracting offices must use when listing on SF 98a the classes of service employees to be used. When contracting officers are unable to find an appropriate title or description in the directory, they must develop and submit an appropriate occupational title and description for the work to DOL with the SF 98 request.

(b) Requests to expedite wage determinations or to check the status of a request may be made by the contracting officer directly to the DOL Wage and Hour Administrator.

422.7005 Hearings.

Requests for hearings under 29 CFR 4.11 will be made by the contracting officer through the head of the contracting activity to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC, 20210. All such requests shall be coordinated with the appropriate legal counsel.

PART 423—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 423.1—Pollution Control and Clean Air and Water

423.104 Exemptions.

(a) Requests for exemption shall be submitted to the Director, Office of Operations. The Office of Operations will coordinate review of the request with the appropriate staff and program officer and submit the request to the Assistant Secretary for Administration for decision.

(b) The Office of Operations shall notify the Environmental Protection Agency upon the granting of an individual exemption, and shall consult with the Environmental Protection Agency in advance of the granting of any class exemption.

[49 FR 12124, Mar. 28, 1984, and 50 FR 14197, Apr. 10, 1985]

PART 424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 424.1—Protection of Individual Privacy

Sec.
424.104 Contract clauses.

Subpart 424.2—Freedom of Information Act

424.202 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 424.1—Protection of Individual Privacy

424.104 Contract clauses.

When applicable, the contracting officer shall insert the clause at 452.224-71, Confidentiality of Information, in contracts involving confidential information.

[53 FR 6066, Feb. 29, 1988]

Subpart 424.2—Freedom of Information Act

424.202 Policy.

USDA implementation of the Freedom of Information and Privacy Acts is found in 7 CFR, Subtitle A, Part 1, Subparts A and G, respectively. Contracting officers shall follow these regulations when responding to requests for information or awarding contracts that will involve the design, development, or operation of a system of records on individuals to accomplish agency function.

[49 FR 12124, Mar. 28, 1984, and 50 FR 14197, Apr. 10, 1985]

PART 425—FOREIGN ACQUISITION

Subpart 425.1—Buy American Act—Supplies

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425.102 Policy.
425.105 Evaluating offers.
425.108 Excepted articles, materials and supplies.

Subpart 425.2—Buy American Act—Construction Materials

425.202 Policy.
425.203 Evaluating offers.
425.204 Violations.

Subpart 425.3—Balance of Payments Program

425.302 Policy.

Subpart 425.4—Purchases Under the Trade Agreements Act of 1979

425.402 Policy.
425.407 Solicitation provision and contract clause.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12124, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 425.1—Buy American Act—Supplies

425.102 Policy.

(a) The Assistant Secretary for Administration shall make the determination prescribed in FAR 25.102(a)(3).

(b) The HCA shall make the determination prescribed in FAR 25.102(a)(4) in accordance with 425.108.

425.105 Evaluating offers.

(a) FAR 25.105 provides that the price of a domestic end product is unreasonable if it exceeds specified percentages. The FAR, however, permits the agency head to determine that offers above these percentages are acceptable.

(1) Contracting officers who determine it is in the best interest of the Government to award a contract to a domestic firm whose offer exceeds the percentages specified in FAR 25.105(a)(1) and (2) may do so only with approval of the Assistant Secretary for Administration.

(2) Requests for approval must:

(i) Be directed to the Director, Office of Operations, by the HCA;

(ii) Be in writing; and

(iii) Provide a detailed justification for the reasonableness of the domestic offer.

(b) If an award of more than $250,000 would be made to a domestic concern if the 12 percent factor were applied, but not if the 6 percent factor were applied, the Assistant Secretary for Administration shall decide whether award to the domestic concern would involve unreasonable cost. The HCA shall refer such proposed awards to the Director, Office of Operations, for coordination of the necessary approval.

425.108 Excepted articles, materials, and supplies.

(a) The HCA shall determine if articles, materials, and supplies should be added to or deleted from the list in FAR 25.108(d)(1). The HCA shall provide a copy of all such determinations to the Director, Office of Operations.

(b) The Director of the Office of Operations shall submit a copy of each determination to the FAR Council in accordance with FAR 25.108 (b) and (c).

Subpart 425.2—Buy American Act—Construction Materials

425.202 Policy.

(a) The Assistant Secretary for Administration shall make the determination prescribed in FAR 25.202(a)(2).

(b) The HCA shall make the determination prescribed in FAR 25.202(a)(3) in accordance with the procedures in 425.108.

(c) The HCA shall make the determination prescribed in FAR 25.202(b).

425.203 Evaluating offers.

The Assistant Secretary for Administration may determine that the use of a particular domestic construction material would be impracticable or unreasonably increase the cost of the contract. If the Assistant Secretary makes such a determination, the restrictions of the Buy American Act shall be waived for that material for the contract in question.

(a) If a contracting officer determines that the use of a particular domestic construction material should be waived for a contract, the contracting officer shall submit the proposed award and the information prescribed in FAR 25.203(b) through the HCA to the Director, Office of Operations.

(b) The Director, Office of Operations, shall evaluate all waiver requests and make a recommendation for approval or disapproval to the Assistant Secretary for Administration.

425.204 Violations.

Contracting officers shall, in accordance with the debarment procedures prescribed in 409.4, refer all violations of the clause found in FAR 52.225-5 to the Department Debarring Officer for possible debarment action.

Subpart 425.3—Balance-of-Payments Program

425.302 Policy.

The HCA shall make the determinations prescribed in FAR 25.302(b) (2) and (3) and may authorize differentials greater than 50 percent as prescribed in FAR 25.302(c).

Subpart 425.4—Purchases Under the Trade Agreements Act of 1979

425.402 Policy.

Whenever the U.S. Trade Representative publishes a redetermination of the dollar threshold at which the Agreement on Government Procurement applies, the Department will set out the dollar threshold in a Departmental Notice, 5025 series. Contracting officers shall use the specified amount to complete paragraph (b) of the clause at FAR 52.225-9.

[53 FR 6067, Feb. 29, 1988]

425.407 Solicitation provision and contract clause.

The contracting officer shall insert the provision at 452.225-70, English Language and U.S. Currency Requirements, whenever the solicitation contains the provision at FAR 52.225-8.

[53 FR 6067, Feb. 29, 1988]

PART 426—[RESERVED]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 427—[RESERVED]

PART 428—BONDS AND INSURANCE

Subpart 428.1—Bonds

Sec.
428.102-3 Solicitation requirements.

Subpart 428.2—Sureties

428.203 Options in lieu of sureties.

Subpart 428.3—Insurance

428.310 Contract clause for work on a Government installation.
428.370 Government-owned vehicles operated in foreign countries.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12125, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 428.1—Bonds

428.102-3 Solicitation requirements.

(a) The contracting officer shall insert the provision at 452.228-70, Notice of Required Bid Guarantee, in a solicitation if a performance bond or a performance and payment bond is required.

(b) The contracting officer shall insert the clause at 452.228-71, Notice of Required Performance Security, in solicitations and contracts for construction or other service contracts over $25,000, which require the contractor to furnish a performance bond.

(c) The contracting officer shall insert the clause at 452.228-72, Notice of Required Payment Security, in solicitations and contracts for construction exceeding $25,000.

[53 FR 6067, Feb. 29, 1988]

Subpart 428.2—Sureties

428.203 Options in lieu of sureties.

HCA's shall establish procedures to ensure protection and conveyance of deposited securities of the types listed in FAR 28.203-1 and 28.203-2.

Subpart 428.3—Insurance

428.310 Contract clause for work on a Government installation.

The contracting officer shall insert the clause at 452.228-73, Insurance Coverage, in solicitations and contracts when a fixed-price contract is contemplated, the contract amount exceeds the appropriate small purchase limitation in FAR Part 13, the contract requires work on a Government installation and contains the clause at FAR 52.228-5, unless—

(a) Only a small amount of work is required on the Government installation (e.g., a few brief visits per month); or

(b) All work on the Government installation is to be performed outside the United States, its possessions, and Puerto Rico.

The contracting officer may insert the following clause in solicitations and contracts described in paragraphs (a) and (b) above if it is in the Government's interest to do so. If property liability insurance is required, the contracting officer shall use the clause with its Alternate I.

[53 FR 6067, Feb. 29, 1988]

428.370 Government-owned vehicles operated in foreign countries.

The Department is authorized to obtain insurance to cover liability incurred by any of its employees while acting within the scope of their employment and operating a Government-owned vehicle in a foreign country (7 U.S.C. 2262).

PART 429—[RESERVED]

PART 430—COST ACCOUNTING STANDARDS

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

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Subpart 430.3—CAS Contract Requirements

430.304 Waiver.

(a) The Director, Office of Operations, is authorized to waive CASB requirements as prescribed in FAR 30.304(c).

(b) Requests for waivers under (a) above shall be prepared by the contracting officer as prescribed in FAR 30.304(a) and submitted by the HCA.

[49 FR 12125, Mar. 28, 1984, and 50 FR 14197, Apr. 10, 1985]

PART 431—[RESERVED]

PART 432—CONTRACT FINANCING

Subpart 432.1—General

Sec.
432.102 Description of contract financing methods.
432.103 Progress payments construction contracts.
432.111 Contract clauses.

Subpart 432.4—Advance Payments

432.402 General.

Subpart 432.5—Progress Payments Based on Costs

432.502 Preaward matters.
432.502-2 Contract finance office clearance.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12125, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 432.1—General

432.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under USDA contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversion. Such payments are authorized also for service contracts, if the contracting officer determines that progress payments based on costs are not practicable and adequate safeguards can be provided to administer progress payments based on a percentage or stage of completion. For all other contracts, progress payment provisions shall be based on costs, as provided in FAR 32.5, as supplemented by Subpart 432.5, except that progress payments based on a percentage or stage of completion may be authorized on a case-by-case basis by the HCA or designee when a determination is made that progress payments based on costs cannot be employed practically and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

[50 FR 14198, Apr. 10, 1985]

432.103 Progress payments construction contracts.

The Government does not, in the course of making progress payments under a fixed-price construction contract, reimburse the contractor for any amount of paid bond premiums in addition to the stated contract price. When the contractor furnishes evidence to the contracting officer that the surety company has been paid in full for bond premiums and requests reimbursement therefore, the first subsequent progress payment shall include the total amount attributable to such bond premiums and the Government shall pay that amount in full without proration or affixing any retainage then or later.

[53 FR 6067, Feb. 29, 1988]

432.111 Contract clause.

The contracting officer shall insert the clause at 452.232-74, Reimbursement for Bond Premiums—Fixed-Price Construction, whenever the clause at FAR 52.232-5 is used in a contract.

[53 FR 6067, Feb. 29, 1988]

Subpart 432.4—Advance Payments

432.402 General.

The HCA is designated as the individual responsible for making the findings and determination and for approval of contract terms concerning advance payments as required by FAR 32.402(e).

Subpart 432.5—Progress Payments Based on Costs

432.502 Preaward matters.

432.502-2 Contract finance office clearance.

The contracting officer shall obtain the approval of the HCA and the cognizant finance office for the contract before taking action under FAR 32.502-2.

PART 433—PROTESTS, DISPUTES, AND APPEALS

Subpart 433.1—Protests

Sec.
433.102 General.
433.103 Protests to the agency.
433.104 Protests to GAO.
433.105 Protests to GSBCA.

Subpart 433.2—Disputes and Appeals

433.203 Applicability.
433.203-70 Agriculture Board of Contract Appeals.
433.209 Suspected fraudulent claims.
433.211 Contracting officer's decision.
433.212 Contracting officer's duties upon appeal.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 433.1—Protests

SOURCE: 51 FR 34566, Sept. 29, 1986, unless otherwise noted.

433.102 General.

The Director, Office of Operations, is responsible for coordinating the handling of bid protests lodged with the General Accounting Office (GAO) and the Genral Services Board of Contract Appeals (GSBCA) against contracts awarded by contracting activities. However, in order that the Department be responsive to the mandatory time frames established in the FAR, the Director, Office of Operations, has authorized each contracting activity to coordinate protests directly with the GAO and the GSBCA.

433.103 Protests to the agency.

When a protest is filed with the contracting activity, the contracting officer shall take prompt action toward resolution and notify the protester in writing of the action taken. The written final decision shall include a paragraph substantially as follows:

> This decision shall be final and conclusive unless a further written notice of protest is filed with the General Accounting Office in accordance with 4 CFR Part 21 or, when applicable, with the General Services Board of Contract Appeals in accordance with 48 CFR Part 61.

The contracting officer need not notify the contractor if the protest can be promptly resolved. If the protest appears to have merit, or if the contracting officer denies the protest but has reason to believe that the protester will file a protest with the GAO or the GSBCA, the contracting officer should promptly notify the contractor in writing and consider suspending contract performance.

433.104 Protests to GAO.

(a) The Director, Office of Operations, has furnished to the GAO a list of the name, title, address and telephone number of an official in each of the contracting activities whom the GAO can contact regarding protests. Contracting activities shall promptly notify the Chief, 00, Procurement Division, of any changes to the list.

(b) Protests received after award shall be handled in accordance with the contracting activities' internal procedures.

(c) If the protest involves significant legal issues, the Office of Operations and the Office of the General Counsel will, upon request, assist contracting activities to reach a proper resolution of the protest.

(d) The HCA shall report to the GAO pursuant to FAR 33.104(f) when the contracting activity has decided not to comply with the GAO's recommendation.

433.105 Protests to GSBCA.

(a) Upon receiving notification of a protest filed with the GSBCA, the contracting officer shall promptly notify the Assistant General Counsel, Research and Operations Division, and coordinate with OGC the contracting activity's response to the protest. The

OGC will provide necessary legal counsel.

(b) The HCA shall make the determination under FAR 33.105(d)(2) whether to proceed with award of a contract that has been protested to the GSBCA and is pending a final decision.

Subpart 433.2—Disputes and Appeals

SOURCE: 49 FR 12125, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted. Correctly redesignated at 51 FR 41790, Nov. 19, 1986.

433.203 Applicability.

(a) The Assistant Secretary for Administration is authorized to determine the applicability of the Contract Disputes Act to contracts with foreign governments pursuant to FAR 33.203.

(b) A written determination shall be prepared for the Assistant Secretary's signature and submitted by the HCA to the Director, Office of Operations, for review and referral to the Assistant Secretary.

433.203-70 Agriculture Board of Contract Appeals.

The Agriculture Board of Contract Appeals (AGBCA) is authorized by the Secretary of Agriculture to hear, consider and determine appeals by contractors from decisions of USDA contracting officers under a contract or relating to a contract made by the Department or by any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal. All appeals brought before the Board are subject to the AGBCA Rules of Procedure in 7 CFR, Part 24.

All correspondence and documents to be filed with the Board should be addressed to the Board of Contract Appeals, U.S. Department of Agriculture, Washington, DC 20250.

433.209 Suspected fraudulent claims.

The contracting officer shall refer all matters related to suspected fraudulent claims by a contractor under the conditions in FAR 33.209 to the Office of the Inspector General for further action or investigation.

433.211 Contracting officer's decision.

The contracting officer's decision under FAR 33.211(a)(4) shall include the Board or Contract Appeals' mailing address and rules of procedure citation as referenced in 433.203-70.

433.212 Contracting officer's duties upon appeal.

Once notified by the AGBCA of an appeal, the contracting officer shall provide data, documentation, information, and support in accordance with the AGBCA Rules of Procedure, 7 CFR 24.9.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 434—MAJOR SYSTEM ACQUISITION

Sec.
434.001 Implementation.
434.002 Policy.
434.003 Responsibilities.
434.004 Acquisition strategy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12126, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

434.001 Implementation.

(a) *Definition.* For the purpose of applying the policy and procedures of OMB Circular No. A-109 within the USDA, the definition of a major system contained in the Circular is to be followed subject to the following:

(1) All system acquisitions which are expected to result in at least 50 million dollars of acquisition costs with private industry are considered to be major system acquisitions and are subject to the requirements of OMB Circular No. A-109.

(2) Other system acquisitions not expected to result in acquisition costs in excess of this 50 million dollar limit may be specifically designated as major system acquisitions subject to A-109 by the USDA Acquisition Executive.

(3) Classification as a major system acquisition is independent of the number of component USDA contracting activities involved in the process. A major system acquisition may occur entirely within the jurisdiction of a single contracting activity or may involve more than one component USDA contracting activity.

(4) The Major Missions of USDA are documented in the USDA Program Structure Dictionary. All major system acquisitions will be in response to a "need" of one of these Major Missions.

(b) *Exemption.* Acquisition of major ADP systems which would otherwise be subject to the requirements of this section and OMB Circular A-109 are exempted from these requirements. USDA has other existing controls which provide the necessary reviews, approval and monitoring procedures to manage major ADP systems acquisitions.

434.002 Policy.

USDA concurs with the objecives of OMB Circular A-109 to assure effectiveness and efficiency in acquiring major systems and also views the guidelines stated in A-109 as necessary steps in the acquisition of any system, be it major or otherwise. The steps outlined in the Circular should serve as a guide to all contracting activities in the planning and developing of all systems. These steps should include:

(a) Expressing needs in "mission terms" to encourage innovation;

(b) Emphasizing initial activities of the system acquisition process;

(c) Communicating with Congress at an early stage;

(d) Establishing clear lines of authority, responsibility, and accountability;

(e) Designating focal points for integration and unification of activities; and

(f) Relying on private industry in accordance with the policies established by OMB Circular No. A-76.

434.003 Responsibilities.

(a) The Secretary of Agriculture is charged by OMB Circular No. A-109 with the responsibility for making four key decisions in each major system acquisition process. These are summarized in paragraph nine of the Circular and elaborated in paragraphs ten through thirteen.

(b) The key executives of USDA, i.e., the Secretary, Deputy Secretary, Under Secretaries, and Assistant Secretaries, individually or as a group, will participate in the identification and definition of specific mission needs to be fulfilled in USDA and in the assignment of priorities to these needs. They will also be involved in assisting the Secretary in making the "key decisions" identified in A-109.

(c) The Assistant Secretary for Administration has been designated by the Secretary to be the Departmental

Acquisition Executive. The Assistant Secretary will assure that OMB Circular No. A-109 is implemented in USDA and ensure that the management objectives of the Circular are realized. The Acquisition Executive is responsible for designating the program manager for each Major System Acquisition designating any acquisition in the Department as a Major System Acquisition and approving the written charter and project control system for each Major System Acquisition.

(d) The Office of Operations will serve as the cognizant staff office in assisting the Assistant Secretary for Administration in carrying out the above responsibilities. The Office of Operations will access the budget development and review process to identify potential major system acquisitions and bring them to the attention of the Assistant Secretary.

(e) HCA's must:

(1) Become familiar with the requirements of OMB Circular No. A-109 and ensure that contracting activity personnel are knowledgeable regarding the Circular.

(2) Take such steps as are necessary to ensure that all potential Major System Acquisitions are brought to the attention of the Acquisitions Executive.

(3) Recommend qualified candidates for designations as program managers for each major system acquisition within their jurisdictions.

(4) Ensure that program managers fulfill their responsibilities and discharge their duties.

(5) Cooperate with the Assistant Secretary for Administration and the Office of Finance and Management in implementing the requirements of the Circular.

(6) Adhere to the principles outlined in the Circular with regard to all major system acquisitions.

(7) Use the principles outlined in the Circular as a guideline for other acquisitions.

(f) Program Managers will:

(1) Plan and carry out the proposed objective of the Major System Acquisition.

(2) Schedule and monitor all aspects of the projects using an appropriate project control system.

(3) Provide analysis papers to recommend decisions to the key executives of USDA and the Secretary.

(4) Document USDA compliance with A-109.

434.004 Acquisition strategy.

(a) The Program Manager will assume operational responsibility for the planning and execution of the Major System Acquisition upon designation by the Acquisition Executive.

(b) The Program Manager will work closely with the Acquisition Executive to develop a written charter outlining the authority, responsibility, accountability, and budget for accomplishing the proposed objective.

(c) The Program Manager will develop a project control system to schedule, monitor, and regularly report on all aspects of the project. The control system will be presented to the Acquisition Executive for approval. In developing the control system, the Program Manager shall provide for appropriate reporting periods and for checkpoints consistent with the "key decisions" Section No. 9 of OMB Circular No. A-109.

(d) Upon initiation of the project, the Program Manager will report regularly (at least monthly) to the Acquisition Executive on the progress achieved to that point. The reports shall include information with regard to the requirements of OMB Circular No. A-109 and how the objectives of the Circular have been realized to present time. Also, the reports shall contain a statement as to what is planned for the next reporting period both in terms of the project itself and the requirements of A-109.

(e) As each "key decision" point is reached, the Program Manager will prepare detailed analysis, findings and recommendations to be submitted, through the Acquisition Executive, to the key executives in the Department. The program manager shall also prepare additional reports and documentation as requested by the key executives.

(f) The Program Manager will work closely with the Director, Office of Finance and Management, with regard to budgeting and financing for the system and will provide the necessary information to OMB and Congress as required by Circular A-109.

PART 435—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

435.010 Scientific and technical reports.
435.015 Contracts for research with educational institutions and nonprofit organizations.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12127, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

435.010 Scientific and technical reports.

(a) Pursuant to FAR 35.010(b), research and development contracts shall contain a provision requiring that the contractor send copies of all scientific and technical reports to the National Technical Information Service (303Y), Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

(b) The release of research and development contract results to other Government activities and to the private sector is subject to the provisions of FAR Subpart 4.4.

435.015 Contracts for research with educational institutions and nonprofit organizations.

(a) Promptly after execution of a basic agreement for research and development with an educational institution or nonprofit organization, the HCA shall furnish a copy of the agreement to the Director, Office of Operations.

(b) The Director, Office of Operations, shall furnish the list required under FAR 35.015(b)(3) to the FAR Secretariat.

PART 436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 436.2—Special Aspects of Contracting for Construction

Sec.

436.201 Evaluation of contractor performance.
436.209 Construction contracts with architect-engineer firms.

Subpart 436.3—Sealed Bidding

436.370 Additive or deductive items.

Subpart 436.5—Contract Clauses

436.570 Scope.
436.571 Prohibition Against the Use of Lead-Based Paint.
436.572 Use of Premises.
436.573 Archeological or historic sites.
436.574 Control of erosion, sedimentation, and pollution.
436.575 Maximum workweek—construction schedule.
436.576 Samples and certificates.
436.577 Emergency control.
436.578 Forest Service Standard Specifications for Construction of Roads and Bridges.
436.579 Opted Timber Sale Road Requirements.

Subpart 436.6—Architect-Engineer Services

436.602 Selection of firms for achitect-engineer contracts.
436.602-1 Selection criteria.
436.602-2 Evaluation boards.
436.602-3 Evaluation board functions.
436.602-4 Selection authority.
436.602-5 Short selection processes for contracts not to exceed $10,000.
436.603 Collecting data on and appraising firms' qualifications.
436.604 Performance evaluation.
436.606 Negotiations.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12127, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 436.2—Special Aspects of Contracting for Construction

436.201 Evaluation of contractor performance.

(a) HCA's shall establish procedures to evaluate construction contractor performance including instructions for review of the evaluation report (SF-1420) as prescribed in FAR 36.201 and 36.701(e).

436.209 Construction contracts with architect-engineer firms.

(a) As required by FAR 36.209, no contract for construction of a project shall be awarded to the firm that designed the project or its subsidiaries or afffiliates without the written approval of the Director, Office of Operations.

(b) Requests for approval under (a) above shall be made by the HCA to the Director, Office of Operations. The request shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

Subpart 436.3—Sealed Bidding

436.370 Additive or deductive items.

(a) When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the solicitation for a base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order or priority. In such case, the contracting officer shall insert the provision at 452.236-70, Additive or Deductive Items, in solicitations for construction.

[49 FR 12127, Mar. 28, 1984, and 50 FR 14197, Apr. 10, 1985, as amended at 53 FR 6067, Feb. 29, 1988]

Subpart 436.5—Contract Clauses

SOURCE: 53 FR 6067, Feb. 29, 1988, unless otherwise noted.

436.570 Scope.

This subpart prescribes clauses for insertion in USDA solicitations and contracts for construction and for dismantling, demolition, or removal of improvements or structures. The contracting officer shall use the clauses as prescribed, in contracts that exceed the small purchase limitation. The contracting officer may use the clauses if the contract amount is expected to be within the small purchase limitation.

436.571 Prohibition Against the Use of Lead-Based Paint.

The contracting officer shall insert the clause at 452.236-71, Prohibition Against the Use of Lead-Based Paint, in solicitations and contracts, if the work involves construction or rehabilitation (including dismantling, demolition, or removal) of residential structures. This clause may be used in contracts for other than residential structures.

436.572 Use of premises.

The contracting officer shall insert the clause at 452.236-72, Use of premises, if the contractor will be permitted to use land or premises administered by USDA.

436.573 Archeological or historic sites.

The contracting officer shall insert the clause at 452.236-73, Archeological or Historic Sites, if the contractor will be working in an area where such sites may be found. Use of the clause is optional in service contracts for on-the-ground work, e.g. reforestation, silvicultural, land stabilization, or other agricultural-related projects.

436.574 Control of erosion, sedimentation, and pollution.

The contracting officer shall insert the clause at 452.236-74, Control of Erosion, Sedimentation and Pollution, if there is a need for applying environmental controls on the performance of work. Use of the clause is optional in service contracts for on-the-ground work; e.g., reforestation, silvicultural, land stabilization, or other agricultural-related projects.

436.575 Maximum workweek—construction schedule.

The contracting officer shall insert the clause at 452.236-75 Maximum Workweek—Construction Schedule, if a specific workweek schedule that is limited to a maximum number of hours is needed.

436.576 Samples and certificates.

The contracting officer shall insert the clause at 452.236-76, Samples and Certificates, in all contracts.

436.577 Emergency control.

A Forest Service contracting officer shall insert the clause at 452.236-77, Emergency Control, in Forest Service construction contracts.

436.578 Forest Service Standard Specifications for Construction of Roads and Bridges.

Forest Service contracting officers shall insert the clause at 452.236-78, Forest Service Standard Specifications for Construction of Roads and Bridges, in Forest Service construction contracts that incorporate the standard specifications.

436.579 Opted Timber Sale Road Requirements.

Forest service contracting officers shall insert the clause at 452.236-79, Opted Timber Sale Road Requirements, in Forest Service road construction contracts resulting from a timber sale turnback.

Subpart 436.6—Architect-Engineer Services

436.602 Selection of firms for architect-engineer contracts.

436.602-1 Selection criteria.

(a) In addition to the selection criteria under FAR 36.602-1(a), the following criteria shall be used in the evaluation of each potential contractor when applicable to a particular acquisition:

(1) Computer-assisted design capability and capacity (where such design is required).

(2) Adequacy of facilities for performance of the work including those necessary to provide specialized services that may be required.

(3) Volume and nature of present workload as it relates to the ability to perform the work required.

(4) Experience and qualifications of proposed key personnel including specialized technical skills, project coordination and management skills, and experience in working together as a team.

(5) Availability of additional contractor personnel or consultants to support expansion or acceleration of the project.

(6) Other specific criteria as may be required.

(b) HCA's are authorized to approve the use of design competition under the conditions in FAR 36.602-1(b).

436.602-2 Evaluation boards.

HCA's shall establish procedures for providing permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602-2. Procedures may provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined by the HCA to be essential to meet the Government's minimum needs.

436.602-3 Evaluation board functions.

(a) Firms shall be evaluated in accordance with the criteria in 436.602-1, as applicable, as well as the criteria in FAR 36.602-1.

(b) The selection report required in FAR 36.602-3(d) shall be prepared for the approval of the HCA. The HCA may authorize an acquisition official above the level of the contracting officer to execute the required approval.

[49 FR 12127, Mar. 28, 1984, as amended at 50 FR 14200, Apr. 10, 1985]

436.602-4 Selection authority.

The HCA shall serve as the selection authority in accordance with FAR 36.602-4. The HCA may authorize an acquisition official above the level of the contracting officer to serve as the selection authority.

436.602-5 Short selection processes for contracts not to exceed $10,000.

The selection process prescribed in FAR 36.602-5(a) shall be used for architect-engineer contracts not expected to exceed $10,000.

436.603 Collecting data on and appraising firms' qualifications.

(a) HCA's which require architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under (a) above shall be submitted to the Director, Office of Operations, for review and comment. The procedures shall include a list of names, addresses, and phone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually.

[49 FR 12127, Mar. 28, 1984, as amended at 50 FR 14200, Apr. 10, 1985]

436.604 Performance evaluation.

(a) HCA's shall establish procedures to evaluate architect-engineer contractor performance including instructions for review of the evaluation report (SF-1421) as prescribed in FAR 36.604 and 36.702(c).

(b) Performance reports shall be distributed to the HCA for filing, distribution points in FAR 36.604(c), and other points required by internal procedures.

436.606 Negotiations.

Whenever a proposal is solicited from an architect-engineer firm selected for negotiation, the contracting officer shall include in the request for proposal a reference to 436.209 as required by FAR 36.606(c).

PART 437—SERVICE CONTRACTING

Subpart 437.1—Service Contracts—General

Sec.
437.104 Personal services contracts.
437.110 Solicitation provisions and contract clauses.

Subpart 437.2—Consulting Services

437.205 Management controls.
437.270 Solicitation and Contract clauses.

AUTHORITY: 5 U.S.C. 301 and 5 U.S.C. 486(c).

SOURCE: 50 FR 14200, Apr. 19, 1985, unless otherwise noted.

Subpart 437.1—Services Contracts—General

437.104 Personal services contracts.

USDA has the following specific statutory authorities to contract for personal services:

(a) Section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225) authorizes contracting with persons or organizations on a temporary basis (without regard to civil service compensation and classification standards in 5 U.S.C., Chapter 51 and Subchapter III of Chapter 53, *Provided:*

(1) That no expenditures shall be made unless specifically provided for in the applicable appropriation, and

(2) The expenditure does not exceed any limitations prescribed in the appropriation.

(b) 7 U.S.C. 1627 authorizes the Secretary of Agriculture to contract with technically qualified persons, firms or organizations to perform research, inspection, classification, technical, or other special services, without regard to the civil-service laws, *Provided*, it is for a temporary basis and for a term not to exceed six months in any fiscal year.

437.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.237-70, Loss, Damage, Destruction of Repair, in contracts for equipment rental, whether the equipment is furnished with or without operator.

(b) The contracting officer shall insert a provision substantially the same as the clause at 452.237-71, Pre-Bid/Pre-Proposal Conference, in all solicitations if a conference with prospective offerors will be held prior to the submittal of bids or proposals.

(c) The contracting officer shall insert a provision substantially the same as the clause at 452.237-72, Pre-Bid/Pre-Proposal Conference and Site Visit, in solicitations when a pre-proposal conference and site visit will be used. Use of the provision, or one substantially the same, is optional for construction solicitations.

(d) The contracting officer shall insert the provision at 452.237-73, Equipment Inspection Visit, in solicitations if work is to be done on Government equipment and an offeror's inspection is encouraged for an understanding of the work to be performed prior to submittal of bids or proposals.

(e) The contracting officer shall insert a clause substantially the same as the clause at 452.237-74, Key Personnel, in contracts if contract performance requires identification of the contractor's key personnel.

(f) The contracting officer shall insert a clause substantially the same as the clause at 452.237-75, Restrictions Against Disclosure, in service contracts (including architect-engineer contracts) requiring restrictions on release of information developed or obtained in connection with performance of the contract.

[53 FR 6068, Feb. 29, 1988]

Subpart 437.2—Consulting Services

437.205 Management controls.

Contracts for consulting services are subject to the management controls and procedures in Departmental Regulations (5000 series).

437.270 Solicitation and Contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.237-76, Progress Reporting, in all contracts for consulting service. It may also be used in other service contracts.

(b) The contracting officer shall insert the clause at 452.237-77, Identification of Contract Deliverables, in contracts for consulting services that require reports.

(c) The contracting officer shall insert a clause substantially the same as the clause at 452.237-78, Contracts with Consulting Firms for Services, in solicitations and for consulting services which prohibit follow-on contracts with the contracting firm.

[53 FR 6068, Feb. 29, 1988]

PART 438—[RESERVED]

PART 439—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES

Subpart 439.70—Delegation of Acquisition Authority

Sec.
439.7001 Blanket delegations of authority.
439.7002 Special delegations of authority.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 439.70—Delegation of Acquisition Authority

439.7001 Blanket delegations of authority.

(a) Each HCA, to whom the Director, OO, has granted a general delegation of contracting authority, may acquire automatic data processing (ADP) resources (as that term is defined in the Federal Information Resources Management Regulation, FIRMR, 41 CFR Part 201-2) up to the following blanket limitations, unless the limits have been amended in either an HCA's general delegation or under a special delegation. These limits are applicable to contracts which are awarded in accordance with the policies and procedures contained in FAR Subpart 6.1, 6.2, and 6.3.

(1) *ADP equipment.* HCA's may acquire ADP equipment (ADPE) if the purchase price does not exceed $250,000 or the basic monthly rental charges (including maintenance) do not exceed $100,000 annually. An upgrade or augmentation to existing ADPE may be acquired under blanket authority if the cumulative purchase value of the initial ADPE plus any features or devices to be added does not exceed $250,000.

(2) *ADP services.* HCA's may acquire ADP services if the contract amount does not exceed $200,000 annually.

(3) *ADP maintenance services.* HCA's may acquire ADP maintenance services if the contract amount does not exceed $100,000 annually.

(4) *ADP software.* HCA's may acquire commercial software if the contract amount does not exceed $100,000 for purchase or annual rental.

(5) *ADP support services.* HCA's may acquire ADP support services if the contract amount does not exceed $300,000 annually.

(6) *ADP supplies.* HCA's may acquire related ADP supplies in any amount under specific purchase programs established by GSA or, absent a GSA program, in the open market.

(7) *ADP systems.* HCA's may acquire ADP equipment, services, maintenance, software, and support services in any combination via one contract for a system configuration, if the individual limits specified in paragraphs

(a)(1), (2), (3), (4), and (5) of this section are not exceeded.

(b) HCA's may acquire ADP resources from GSA requirements-type or schedule contracts up to the limits set forth in FIRMR 201-23.104 and in accordance with the procedures in FIRMR 201-32.206.

[53 FR 6068, Feb. 29, 1988; 53 FR 12748, Apr. 18, 1988]

439.7002 Special delegation of authority.

HCA's shall submit each prospective acquisition, which is greater than the limits of the blanket delegations of authority set forth in 439.7001 or any other limits stipulated in the HCA's general delegation, to the Director, OO, for a delegation of ADP contracting authority. The Office of Operations will either conduct the acquisition or delegate special authority to the HCA to conduct the acquisition.

[53 FR 6068, Feb. 29, 1988]

PARTS 440-441—[RESERVED]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 442—CONTRACT ADMINISTRATION

Subpart 442.1—Interagency Contract Administration and Audit Services

Sec.
442.102 Procedures.

Subpart 442.7—Indirect Cost Rates

442.704 Billing rates.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 442.1—Interagency Contract Administration and Audit Services

442.102 Procedures.

(a) The Office of the Inspector General (OIG), Audit Division, has established a cross-servicing arrangement with the Defense Contract Audit Agency (DCAA) to provide contract audit services required by the FAR.

(b) All contract audit services required by contracting officers shall be coordinated through the cognizant OIG Regional Inspector General—Auditing (RIG-A). Cognizance is determined on the basis of the contractor's location. The OIG will, at its discretion, perform the audit with OIG personnel or refer the request to the DCAA if such would be more practical due to workload considerations or the location of the contractor. There is no charge for audit services coordinated through OIG.

(c) In order to ensure compliance with this requirement and to evaluate the results of audits, contracting officers shall forward to the RIG-A copies of all price negotiation memoranda prepared for contracts and contract modifications in excess of $500,000.

[49 FR 12129, Mar. 28, 1984, and 50 FR 14197, Apr. 10, 1985]

Subpart 442.7—Indirect Cost Rates

442.704 Billing rates.

The contracting officer shall insert a clause substantially the same as the clause at 452.242-70, Estimated and Allowable Costs, in cost-plus-fixed-fee contracts. The clause with its Alternate I is for use in cost (no-fee) contracts. The clause with its Alternate II is for use in cost-plus-incentive-fee contracts. The clause with its Alternate III is for use in cost-plus-award-fee contracts.

[53 FR 6069, Feb. 29, 1988]

PARTS 443-444—[RESERVED]

PART 445—GOVERNMENT PROPERTY

Subpart 445.1—General

Sec.
445.106 Government property clauses.

Subpart 445.3—Providing Government Property to Contractors

445.302 Providing facilities.
445.302-1 Policy.
445.302-7 Optional property-related clauses for facilities contracts.

Subpart 445.4—Contractor Use and Rental of Government Property

445.403 Rental—Use and Charges Clause.
445.407 Non-Government use of plant equipment.

Subpart 445.6—Reporting, Redistribution and Disposal of Contractor Inventory

445.608 Screening of contractor inventory.
445.608-6 Waiver of screening requirements.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12129, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 445.1—General

445.106 Government property clauses.

The contracting officer shall insert the clause at 452.245-70, Government-Furnished Property, in contracts in which Government property is furnished to the contractor.

[53 FR 6069, Feb. 29, 1988]

Subpart 445.3—Providing Government Property to Contractors

445.302 Providing facilities.

445.302-1 Policy.

HCA's are authorized to make determinations for providing facilities to a contractor as prescribed in FAR 45.302-1(a)(4).

445.302-7 Optional property-related clauses for facilities contracts.

The contracting officer shall insert a clause substantially the same as the clause at 452.245-71, Government Property-Facilities Use, in contracts to authorize the contractor to use specified Government-owned facilities.

[53 FR 6069, Feb. 29, 1988]

Subpart 445.4—Contractor Use and Rental of Government Property

445.403 Rental—Use and Charges clause.

HCA's are authorized to make determinations for charging rent on the basis of use under the Use and Charges clause in FAR 52.245-9 as prescribed in FAR 45.403(a).

445.407 Non-Government use of plant equipment.

Requests for non-Government use of plant equipment as prescribed in FAR 45.407 shall be submitted by the HCA to the Director, Office of Operations, for approval.

Subpart 445.6—Reporting, Redistribution and Disposal of Contractor Inventory

445.608 Screening of contractor inventory.

445.608-6 Waiver of screening requirements.

Requests to waive screening requirements as prescribed in FAR 45.608-6 shall be submitted by the HCA to the Director, Office of Operations, for approval.

PART 446—QUALITY ASSURANCE

Subpart 446.3—Contract Clauses

Sec.
446.370 Inspection and acceptance.

Subpart 446.6—Material Inspection and Receiving Reports

446.601 Inspection and receiving.
446.602 Acceptance.
446.603 Inspection, acceptance, and receiving certification.
446.604 Distribution of material inspection and receiving reports.

Subpart 446.7—Warranties

446.704 Authority for use of warranties.
446.708 Warranties of data.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12129, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 446.3—Contract Clauses

446.370 Inspection and acceptance.

The contracting officer shall insert a clause substantially the same as the clause at 452.246-70, Inspection and Acceptance, in contracts where inspection and acceptance will be performed at the same location. The clause with its Alternate I is for use when inspection and acceptance will be performed at different locations.

[53 FR 6069, Feb. 29, 1988]

Subpart 446.6—Material Inspection and Receiving Reports

446.601 Inspection and receiving.

(a) The certification stated in 446.603 shall be inserted on each commercial shipping document or packing list for supplies or services and shall be signed by the authorized Government representative as required by FAR 46.401(f), except for small purchases (see FAR 46.404).

(b) Form AD-838, Purchase Order, shall be used to comply with the requirements of FAR 46.406(f) and FAR 46.404.

(c) The certification required by 446.601(a) shall be made at the place or places specified in the contract for performance of Government quality assurance as required by FAR 46.401(b) and as prescribed in FAR 46.402 or FAR 46.403, as appropriate.

446.602 Acceptance.

(a) The certification stated in 446.603 shall be inserted on each commercial shipping document or packing list for supplies or services and signed by the authorized Government representative as required by FAR 46.501.

(b) The certification required by 446.602(a) shall be made at the place or places specified in the contract for Government acceptance as required by FAR 46.503.

(c) If the contracting officer elects to use a contractor's certificate of conformance as allowed by FAR 46.315 under the conditions prescribed by FAR 46.504, the certificate may be used as the basis for Government acceptance.

(d) Form AD-838, Purchase Order, shall be used to comply with the requirements of FAR 46.501.

446.603 Inspection, acceptance and receiving certification.

As prescribed in this subpart, the following certification shall be inserted on commercial shipping documents or packing lists for supplies or services:

INSPECTION, ACCEPTANCE AND RECEIVING CERTIFICATION

The listed items or services have been: —— inspected, ——accepted, —— received by me or under my supervision and they conform to contract except as noted below or on attached documents.

Date ——————————

(Signature) ——————————

(Typed name of authorized
Government representative)

446.604 Distribution of material inspection and receiving reports.

Distribution of material inspection and receiving reports shall be made in accordance with established procedures established by contracting activities.

Subpart 446.7—Warranties

446.704 Authority for use of warranties.

(a) The requisitioning unit is responsible for preparing a written recommendation to identify those acquisitions deemed appropriate for application of warranty provisions. The recommendation shall address the criteria set forth at FAR 46.703 to document the basis on which a warranty is considered appropriate. The recommendation shall also identify the specific parts, subassemblies, assemblies, systems, or contract line items to which a warranty should apply.

(b) Before soliciting the requirement, the contracting officer shall make a written determination, subject to approval at a level above the contracting officer, whether to include a warranty contract clause.

[50 FR 14200, Apr. 10, 1985]

446.708 Warranties of data.

Warranties of data shall be developed and used only after review and approval by OGC.

PART 447—TRANSPORTATION

Subpart 447.3—Transportation in Supply Contracts

Sec.
447.302 Place of delivery—F.O.B. point.
447.305-10 Packing, marking, and consignment instructions.

AUTHORITY: 5 U.S.C. 30 and 40 U.S.C. 486(c).

Subpart 447.3—Transportation in Supply Contracts

447.302 Place of delivery—F.O.B. point.

The contracting officer shall insert a clause substantially the same as the clause at 452.247-70, Delivery Location, in supply contracts when it is necessary to specify delivery locations. If appropriate, the clause may reference an attachment which lists various delivery locations and any other delivery details (e.g., quantities to be delivered to each location, etc).

[53 FR 6069, Feb. 29, 1988]

447.305-10 Packing, marking, and consignment instructions.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.247-71, Marking Deliverables, in solicitations and contracts if special markings on deliverables (other than reports) are required.

(b) The contracting officer shall insert the clause at 452.247-72, Packing for Domestic Shipment, in contracts when item(s) will be delivered to a continental destination for immediate use, when the material specification or purchase description does not provide preservation, packaging, packing and/or marking requirements and/or when the requiring activity has not cited a specific specification for packaging.

(c) The contracting officer shall insert the clause at 452.247-73, Packing for Overseas Shipment, in contracts when item(s) will be delivered to an overseas destination for immediate use, the material specification does not specify packing levels and the required activity has not specified such requirements.

[53 FR 6069, Feb. 29, 1988]

PART 448—VALUE ENGINEERING

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 448.1—Policies and Procedures

448.102 Policies.

(a) USDA is exempt from the requirements of FAR Part 48, Value Engineering.

(b) HCA's are encouraged to implement value engineering programs in their contracting activities in accordance with FAR Part 48 when it has been determined by the HCA that such implementation is in the best interest of the Government.

[49 FR 12130, Mar. 28, 1984, and 50 FR 14197, Apr. 10, 1985]

PART 449—TERMINATION OF CONTRACTS

Subpart 449.1—General Principles

Sec.
449.106 Fraud or other criminal conduct.
449.107 Audit of prime contract settlement proposals and subcontract settlements.
449.111 Review of proposed settlements.

Subpart 449.4—Termination for Default

449.402 Termination of fixed-price contracts for default.
449.402-3 Procedure for default.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12130, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

Subpart 449.1—General Principles

449.106 Fraud or other criminal conduct.

(a) Whenever fraud, such as falsified documents, false statements, or other criminal conduct related to the settlement of a terminated contract is suspected, the contracting officer shall discontinue negotiations and prepare a report of the facts. The report shall be submitted by the HCA to the Inspector General along with copies of documents or other information connected with the suspected violation(s). Concurrently, a copy of the report shall also be submitted to the Director, Office of Operations.

(b) Depending of the findings of the Inspector General, the HCA may initiate suspension of debarment action as prescribed in FAR Part 9.4 and Part 490.4 of this chapter. .

449.107 Audit of prime contract settlement proposals and subcontract settlements.

Prime contractor settlement proposals and subcontract settlements requiring audit review in accordance with FAR 49.107 shall be referred to the Inspector General.

449.111 Review of proposed settlements.

All proposed settlement agreements shall be reviewed and approved at a level above the contracting officer in accordance with contracting activity procedures. Settlement agreements of

$50,000 or more shall be approved by the HCA.

Subpart 449.4—Termination for Default

449.402 Termination of fixed-price contracts for default.

449.402-3 Procedure for default.

(a) In addition to the requirements of FAR 49.402-3(g), the notice of termination shall contain instructions regarding the disposition of any Government property in the possession of the contractor (see FAR 45.508-1) and, in the case of construction contracts, such materials, appliances, and structures as may be on the site of the construction work. The notice shall also contain a statement concerning the liability of the contractor or its surety for any liquidated damages (see FAR 49.402-7).

(b) The notice of termination suggested under FAR 49.601-2 shall be modified in accordance with (a) above.

PART 450—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.
450.001 Definitions.

Subpart 450.1—General

450.103 Deviations.
450.104 Reports.

Subpart 450.2—Delegation of and Limitations on Exercise of Authority

450.201 Delegation of authority.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Source: 49 FR 12130, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

450.001 Definitions.

"Approving authority," as used in this part, means the Assistant Secretary for Administration.

Subpart 450.1—General

450.103 Deviations.

Requests for deviations to FAR Part 50 shall be submitted by the HCA to the Director, Office of Operations, for approval.

450.104 Reports.

The Director, Office of Operations, shall prepare the report required by FAR 50.104.

Subpart 450.2—Delegation of and Limitations on Exercise of Authority

450.201 Delegation of authority.

The Assistant Secretary for Administration is authorized to approve all actions under FAR Part 50 except indemnification actions listed in FAR 50.201(d).

PART 451—[RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 452.2—Texts of Provisions and Clauses

Sec.

452.204-70 Data Universal Numbering System (DUNS).
452.204-71 Inquiries.
452.207-70 Definition of "Right of First Refusal".
452.207-71 Report of Employment Under Commercial Activities.
452.209-70 Organizational Conflict of Interest.
452.210-70 Brand Name or Equal.
452.210-71 Statement of Work/Specifications.
452.210-72 Attachments to Statement of Work/Specifications.
452.212-70 Level of Effort—Cost-Reimbursement Term Contract.
452.212-71 Task Orders.
452.212-72 Period of Performance.
452.212-73 Effective Period of the Contract.
452.214-70 Award by Lot.
452.215-71 Instructions for the Preparation of Technical and Business Proposals.
452.215-72 Amendments to Proposals.
452.215-73 Submission of Proposals.
452.215-74 General Financial and Organizational Information.
452.215-75 Definition of Labor Classifications.
452.215-77 Post-Award Conference.
452.216-70 Award Fee.
452.216-71 Base Fee and Award Fee Proposal
452.216-72 Evaluation Quantities—Indefinite-Delivery Contract.
452.216-73 Minimum and Maximum Contract Amounts.
452.216-74 Ceiling Price.
452.216-75 Letter Contract.
452.217-70 Option to Extend the Term of the Contract—Cost-Plus-Fixed-Fee Contract.
452.217-71 Option to Extend the Term of the Contract—Cost-No-Fee Contract.
452.217-72 Option to Extend the Term of the Contract—Cost-Plus-Award-Fee Contract.
452.217-73 Option for Increased Quantity—Cost-Plus-Fixed-Fee Contract.
452.217-74 Option for Increased Quantity—No-Fee Contract.

Sec.

452.217-75 Option for Increased Quantity—Cost-Plus-Award-Fee Contract.
452.217-76 Option to Extend the Effective Period of the Contract—Time-and-Material or Labor-Hour Contract.
452.217-77 Option to Extend the Effective Period of the Contract—Indefinite-Delivery/Indefinite-Quantity Contract.
452.217-78 Option to Extend the Term of the Contract—Fixed-Price Contract.
452.217-79 Option for Increased Quantity—Fixed-Price Contract.
452.219-70 Set-Aside/Size Standard Information.
452.222-70 Service Contract Act of 1965—Contracts of $2,500 or less.
452.222-71 Service Contract Act of 1965.
452.222-72 Statement of Equivalent Rates for Federal Hires.
452.222-73 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
452.224-70 Confidentiality of Information.
452.225-70 English Language and U.S. Currency Requirements.
452.228-70 Notice of Required Bid Guarantee.
452.228-71 Notice of Required Performance Security.
452.228-72 Notice of Required Payment Security.
452.228-73 Insurance Coverage.
452.232-70—452.232-73 [Reserved]
452.232-74 Reimbursement for Bond Premiums—Fixed-Price Construction.
452.236-70 Additive or Deductive Items.
452.236-71 Prohibition Against the use of Lead-Based Paint.
452.236-72 Use of Premises.
452.236-73 Archeological or Historic Sites.
452.236-74 Control or Erosion, Sedimentation, and Pollution.
452.236-75 Maximum Workweek—Construction Schedule.
452.236-76 Samples and Certificates.
452.236-77 Emergency Control.
452.236-78 Forest Service Standard Specifications for construction of Roads and Bridges.
452.236-79 Opted Timber Sale Road Requirements.
452.237-70 Loss, Damage, Destruction or Repair.
452.237-71 Pre-Bid/Pre-Proposal Conference.
452.237-72 Pre-Bid/Pre-Proposal Conference and Site Visit.
452.237-73 Equipment Inspection Visit.
452.237-74 Key Personnel.
452.237-75 Restrictions Against Disclosure.
452.237-76 Progress Reporting.
452.227-77 Identification of Contract Deliverables.

Sec.
452.227-78 Contracts with Consulting Firms for Services.
452.242-70 Estimated and Allowable Costs.
452.245-70 Government-Furnished Property.
452.245-71 Government Property—Facilities Use.
452.246-70 Inspection and Acceptance.
452.247-70 Delivery Location.
452.247-71 Marking Deliverables.
452.247-72 Packing for Domestic Shipment.
452.247-73 Packing for Overseas Shipment.
452.252-70 List of Attachments.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 452.2—Texts of Provisions and Clauses

SOURCE: 53 FR 6069, Feb. 29, 1988, unless otherwise noted.

452.204-70 Data Universal Numbering System.

As prescribed in 404.670, insert the following provision:

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) (FEB 1988)

(a) The offeror is requested to insert the DUNS number applicable to the contractor's address shown on the solicitation form.

DUNS NO ——————————

(b) If the production point (point of final assembly) is other than the location entered on the solicitation form, or if additional production points are involved, enter the DUNS number applicable to each production point in the space provided below.

ITEM NO. ——————————

MANUFACTURER ——————————

PRODUCTION POINT ——————————

DUNS NO. ——————————

(c) If DUNS numbers have not been established for the contractor, or the production point(s) shown above, a number will be assigned upon request by Dun & Bradstreet, Allentown, Pennsylvania, phone (215) 776-4383, 89, 90 or 91.

(End of provision)

452.204-71 Inquiries.

As prescribed in 404.7001, insert a provision substantially as follows:

INQUIRIES (FEB 1988)

Inquiries and all correspondence concerning this solicitation should be submitted in writing to the Contracting Officer. Offerors should contact only the contracting officer issuing the solicitation about any aspect of this requirement prior to contract award.

(End of provision)

452.207-70 Definition of "Right of First Refusal."

As prescribed in 407.305, insert the following clause:

DEFINITION OF "RIGHT OF FIRST REFUSAL" (FEB 1988)

(a) OMB Circular A-76 provides that Contractors will give Federal employees displaced as a result of a conversion to contract the right of first refusal for employment on the contract in positions for which they are qualified and for which the Contractor is hiring. The purpose of this clause is to define the phrase "displaced as a result of the conversion" so that eligibility for the right of first refusal can be determined.

(b) It is the policy of the U.S. Department of Agriculture to extend the right first refusal to any permanent full-time or permanent part-time employee who, as a result of a reduction-in-force notice, is reduced in grade or separated as a direct result of a "conversion" action under OMB Circular A-76. A conversion is defined as "the transfer of work from Government commercial or industrial activity to performance by a private commercial source under contract."

(c) Offers by Contractors made as a result of an employee's right of first refusal will be subject to the terms and conditions of employment set by the Contractor. For example, a permanent part-time employee does not have the right to a part-time tour of duty with the Contractor. Similarly, this policy does not afford an affected Government employee any right to a specific job or salary. Such employment considerations are deemed to be matters solely between the Contractor and the affected Government employee. Employees with the right of first refusal have only the right to an offer of a position for which they are qualified and for which the Contractor is hiring.

(d) Employees who hold any Federal civil service appointment other than permanent (e.g., a temporary appointment) do not have a right of first refusal if displaced as a result of a conversion.

(e) The determination by USDA of an employee's eligibility for the right of first refusal is appealable under the procedures provided in Departmental Regulation (DR) 2170-1. Determinations related to the implementation of OMB Circular A-76 are not subject to any negotiated or agency grievance procedure. Decisions rendered under the agency procedure are final.

(f) The Contracting Officer will provide a successful Contractor with a listing of those employees that USDA has determined are eligible for right of first refusal.

(End of clause)

452.207-71 Report of Employment Under Commercial Activities.

As prescribed in 407.305, insert the following clause:

REPORT OF EMPLOYMENT UNDER COMMERCIAL ACTIVITIES (FEB 1988)

(a) The Contracting Officer, as soon as practicable, will provide the Contractor with a list of the Federal employees, including social security numbers, that will be involuntarily separated from Government employment as a result of this contract.

(b) The Contractor agrees—

(1) To provide the Contracting Officer within five working days after the date of transfer of the operation and maintenance responsibilities of a Federal project to the Contractor (contract start date) with the names and social security numbers of individuals on the list referenced in paragraph (a) that, as of the contract start date, had accepted or rejected offers of employment comparable to their previous employment with the Federal Government. For those who reject the Contractor's offer, the Contractor shall include total monetary value of the pay and benefits offered;

(2) To provide the Contracting Officer with the names and social security numbers of the individuals hired, within five working days of such hiring, during the first 90 days after the contract start date, if the Contractor hires any additional Federal employees on the list referenced in paragraph (a) for any job within the Contractor's organization; and

(3) To furnish the information required by this clause in a concise and clearly detailed format.

(c) The operation of the system of records identified by this clause is subject to the Privacy Act of 1974 (5 U.S.C. 552a) and clause 52.224-1 "Privacy Act Notification" and clause 52.224-2 "Privacy Act" included in this contract. This clause constitutes the notice required to invoke compliance by the Contractor with the provisions of the notice and clause.

(End of clause)

452.209-70 Organizational Conflicts of Interest.

As prescribed in 409.504, insert a clause substantially as follows:

ORGANIZATIONAL CONFLICTS OF INTEREST (FEB 1988)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, or that the Contractor has disclosed all such relevant information.

(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(c) The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue; such other remedies as may be permitted by law or this contract.

(d) The Contractor further agrees to insert provisions which shall conform substantially to the language of this clause, including this paragraph (d), in any subcontract or consultant agreement hereunder.

(End of clause)

452.210-70 Brand Name or Equal.

As prescribed in 410.004, insert the following provision:

BRAND NAME OR EQUAL (FEB 1988)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids or proposals and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the bidder clearly indicates in its bid that it is offering an "equal" product, its bid shall be considered as offering a brand name product referenced in the solicitation.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to the equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in its bid as well as other information reasonably available to the contracting activity. Caution to bidders: The contracting activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the contracting activity. Accordingly, to assure that sufficient information is available, the bidder must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to—(i) Determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the solicitation, the bid shall include: (i) A clear description of such proposed modifications and (ii) clearly marked descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of clause)

452.210-71 Statement of Work/Specifications.

As prescribed in 410.011, insert a clause substantially as follows:

STATEMENT OF WORK/SPECIFICATIONS (FEB 1988)

The Contractor shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified), to perform the Statement of Work/Specifications referenced in Section J.

(End of clause)

452.210-72 Attachments to Statement of Work/Specifications.

As prescribed in 410.011, insert the following clause:

ATTACHMENTS TO STATEMENT OF WORK/SPECIFICATIONS (FEB 1988)

The attachments to the Statement of Work/Specifications listed in Section J are hereby made part of this solicitation and any resultant contract.

(End of clause)

452.212-70 Level of Effort—Cost-Reimbursement Term Contract.

As prescribed in 412.104(a)(1), insert a clause substantially as follows:

LEVEL OF EFFORT—COST-REIMBURSEMENT TERM CONTRACT (FEB 1988)

(a) The Contractor shall perform all work and provide all required reports within the level of effort specified below. The Government will order * direct labor hours for the base period which represents the Government's best estimate of the level of effort required to fulfill these requirements.

(b) For determining level of effort hours, direct labor includes personnel such as engineers, scientists, draftsmen, technicians, statisticians, and programmers. Support personnel such as company management, typists, and key punch operators will not be considered as part of the level of effort. However, support personnel should be charged directly to the contract if it is the Contractor's practice to do so.

(c) If the Contractor provides less than 90 percent of the level of effort specified for the base period or any optional period ordered, an equitable downward adjustment of the fixed fee for that period will be made. The Government may require the Contractor to provide additional effort up to 110 percent of the level of effort for any period until the estimated cost for that period has been reached. However, this additional effort shall not result in any increase in the fixed fee.

(d) If the level of effort specified to be ordered during a given base or option period is not ordered during that period, that level of effort may not be accumulated and ordered during a subsequent period.

(e) These terms and conditions do not supersede the requirements of either of the FAR clauses 52.232-20 "Limitation of Cost" or 52.232-22 "Limitation of Funds".

(End of clause)

**Contracting Officer shall insert number of estimated direct labor hours.*

Alternate I (Feb 1988). As prescribed in 412.104(a)(2), substitute a paragraph (c) substantially as follows, when a cost or cost-sharing term contract without fee is contemplated:

(c) The Government may require the Contractor to provide additional effort up to 110 percent of the level of effort for any period until the estimated cost for that period has been reached.

Alternate II (Feb 1988). As prescribed in 412.104(a)(3), substitute a paragraph (c) substantially as follows, when a cost-plus-incentive-fee (CPIF) term contract is contemplated:

(c) If the Contractor provides less than 90 percent of the level of effort specified for the base period or any optional period ordered, an equitable downward adjustment of the base fee and incentive fee for that period will be made. The Government may require the Contractor to provide additional effort up to 110 percent of the level of effort for any period until the estimated cost for that period has been reached. However, this additional effort shall not result in any increase in the base fee and incentive fee.

Alternate III (Feb 1988). As prescribed in 412.104(a)(4), substitute a paragraph (c) substantially as follows, when a cost-plus-award-fee (CPAF) term contract is contemplated:

(c) If the Contractor provides less than 90 percent of the level of effort specified for the base period or any optional period ordered, an equitable downward adjustment of the base fee and award fee for that period will be made. The Government may require the Contractor to provide additional effort up to 110 percent of the level of effort for any period until the estimated cost for that period has been reached. However, this additional effort shall not result in any increase in the base fee and award fee.

452.212-71 Task Orders

As prescribed in 412.104(b), insert a clause substantially as follows in cost-reimbursement term contracts when task orders are to be used.

TASK ORDERS (FEB 1988)

(a) The Contractor shall perform work under this contract as specified in written task orders issued by the Contracting Officer.

(b) Each task order will include: (1) A numerical designation, (2) the estimate of required labor hours, (3) the period of performance and schedule of deliverables, (4) the description of the work, and (5) identification of the period (base, option period No. 1, etc.) to which the task order is to be charged if the contract includes overlapping option periods.

(c)(1) The Contractor shall acknowledge receipt of each task order by returning to the Contracting Officer a signed copy of the task order within ——*—— calendar days after its receipt. The Contractor shall begin work immediately upon receipt of a task order.

(2) Within ——*—— calendar days after receipt of a task order, the Contractor shall submit ——**—— copies of a work plan to the Contracting Officers Representative and ——**—— copies to the Contracting Officer. The work plan shall include a detailed technical and staffing plan and detailed cost estimate.

(3) Within ——*—— calendar days after receipt of the work plan, the Contracting Officer will provide written approval or disapproval of it to the Contractor.

(4) If the Contractor has not received approval on a work plan within ——*—— calendar days after its submission, the Contractor shall stop work on that task order. Also, if the Contracting Officer disapproves a work plan, the Contractor shall stop work until the problem causing the disapproval is resolved. In either case, the Contractor shall resume work only when the Contracting Officer finally approves the work plan.

(d) This clause does not change the requirements of clause 452.212-70 "Level of Effort—Cost Reimbursement Term Contract," nor the notification requirements of either of the FAR clauses 52.232-20 "Limitation of Cost" or 52.232-22 "Limitation of Funds".

(e) Task orders shall not change any terms or conditions of the contract. If any language in the work assignment may suggest a change to the terms or conditions, the Contractor shall immediately request clarification from the Contracting Officer.

(End of clause)

**Contracting Officer shall insert appropriate numbers of calendar days.*

***Contracting Officer shall insert appropriate number of copies.*

452.212-72 Period of Performance.

As prescribed in 412.104(c)(1), insert the following clause:

PERIOD OF PERFORMANCE (FEB 1988)

The period of performance of this contract is from ——*—— through ——*——.

(End of clause)

**Contracting Officer shall insert the appropriate dates.*

452.212-73 Effective Period of the Contract.

As prescribed in 412.104(c)(2), insert the following clause:

EFFECTIVE PERIOD OF THE CONTRACT (FEB 1988)

The effective period of this contract is from —*— through —*—.

(End of clause)

**Contracting Officer shall insert appropriate dates.*

452.214-70 Award by Lot.

As prescribed in 414.201-6, insert a provision substantially as follows:

AWARD BY LOT (FEB 1988)

Subject to the Section L provision entitled "Contract Award—Sealed Bidding," award will generally be made to a single bidder on each entire lot. However, the Government reserves the right to award by items within any lot when the Contracting Officer determines that it is advantageous to the Government.

(End of provision)

452.215-71 Instructions for the Preparation of Technical and Cost or Pricing Proposals.

As prescribed in 415.407(a), insert a provision substantially as follows:

INSTRUCTIONS FOR THE PREPARATION OF TECHNICAL AND BUSINESS PROPOSALS (FEB 1988)

(a) *General Instructions.* The following instructions establish the acceptable minimum requirements for the format and content of proposals:

(1) The proposal must be prepared in two parts: a technical proposal and a business proposal. Each of the parts shall be separate and complete in itself so that evaluation of one may be accomplished independently from evaluation of the other. The technical proposal must not contain reference to cost; however, resource information (such as data concerning labor hours and categories, materials, subcontracts, etc.) must be contained in the technical proposal so that the contractor's understanding of the statement of work may be evaluated. It must disclose the contractor's technical approach in sufficient detail to provide a clear and concise presentation that includes, but is not limited to, the requirement of the technical proposal instructions.

(2) Offerors may, at their discretion, submit alternate proposals or proposals which deviate from the requirement; provided, that an offeror also submit a proposal for performance of the work as specified in the statement of work. Any "alternate" proposal may be considered if overall performance would be improved or not compromised, and if it is in the best interest of the Government. Alternate proposals, or deviations from any requirement of this RFP, must be clearly identified.

(3) The Government will evaluate proposals in accordance with the evaluation criteria set forth in Section M of this RFP.

(b) *Technical Proposal Instructions.* (1) Proposals which merely offer to conduct a program in accordance with the requirements of the Government's statement of work will not be eligible for award. The contractor must submit an explanation of its proposed technical approach in conjunction with the tasks to be performed in achieving the project objectives.

(2) A detailed work plan must be submitted indicating how each aspect of the statement of work is to be accomplished. The technical approach should be in as much detail as the offeror considers necessary to fully explain the proposed technical approach or method. The technical proposal should reflect a clear understanding of the nature of the work being undertaken.

(3) The technical proposal must include information on how the project is to be organized, staffed, and managed. Information should be provided which will demonstrate the offeror's understanding and management of important events or tasks. The offeror must explain how the management and coordination of consultant and/or subcontractor efforts will be accomplished.

(4) The technical proposal must include a list of names and proposed duties of the professional personnel, consultants, and key subcontractor employees assigned to the project. Their résumés should be included and should contain information on education, background, recent work experience, and specific scientific or technical accomplishments. The approximate percentage of time each individual will be available for this project must be included. The proposed staff hours for each of the above individuals should be allocated against each task or subtask for the project.

(5) The technical proposal must provide the general background, experience and qualifications of the organization. Similar or related contracts, subcontracts, and/or grants should be included and/or each contain the name of the customer, contract number, dollar amount, time of performance, and the names and telephone numbers of the project officer and contracting/grants officer.

(6) The technical proposal must contain a discussion of present or proposed facilities

and equipment which will be use in the performance of the contract.

(c) *Business Proposal Instructions.*

(1) General Requirements. To reduce subsequent requests to offerors for additional data in support of proposed costs, the following information is required:

(i) Cost proposals must be submitted in accordance with **FAR 15.804-6** by using Standard Form 1411, Contract Pricing Proposal Cover Sheet, and Table 15-2, Instructions for Submission of a Contract Pricing Proposal.

(ii) The offeror shall submit separate cost or pricing data for the following:

(A) Options to extend the term of the contract.

(B) Options specified in the proposed statement of work.

(C) Major tasks, if required by special instruction.

(2) Specific Requirements. The offeror must also submit the following detailed information to support the proposed budget:

(i) Breakdown of direct labor cost by named person or labor category including number of labor hours and current actual or average hourly rates. Indicate whether current rates or escalated rates are used. If escalation is included, state the degree (percent) and methodology. Direct labor or levels of effort are to be identified as labor hours and not as a percentage of an individual's time. Indicate fringe benefit rate, if separate from the indirect cost rate.

(ii) The amount proposed for travel, subsistence and local transportation supported with a breakdown which includes: number of trips anticipated, cost per trip per person, destination(s) proposed, number of person(s) scheduled for travel, mode of transportation, and mileage allowances if privately owned vehicles will be used.

(iii) Cost breakdown of materials, equipment and other direct costs including duplication/reproduction, meetings and conferences, postage, communication and any other applicable items. Costs must be supported by specific methodology utilized.

(iv) If an offeror proposes to employ the use of an Automatic Data Processing System (ADPS), detailed data concerning proposed costs should include the following:

(A) Make and model year of all equipment which will be used: keypunch, verifier, sorter, collator, tabulator, central processor unit (CPU), input-output components (I/O), etc.

(B) Estimated number of hours and usage rates for each distinct piece of equipment proposed.

(C) Listing of rates or quotes from prospective suppliers of the offeror.

(D) Copies of invoices submitted by past suppliers of the offeror.

(E) Listing of rates developed and/or approved by a Government agency where offeror has in-house capability.

(v) If consultants are proposed, detailed data concerning proposed consultant costs should include the following:

(A) Names of consultant(s) to be engaged.

(B) Daily fees to be paid to each consultant.

(C) Estimated number of days of consulting services.

(D) Consulting agreements entered into between consultant(s) and the offeror, or invoices submitted by consultant(s) for similar services previously provided to the offeror.

(E) Rationale for acceptance of cost.

(vi) If proposed, cost information for each subcontractor shall be furnished in the same format and level of detail as prescribed for the prime offeror. Additionally, the offeror shall submit the following information:

(A) A description of the items to be furnished by the subcontractor.

(B) Identification of the proposed subcontractor and an explanation of why and who the proposed subcontractor was selected including the extent of competition obtained.

(C) The proposed subcontract price, the offeror's cost or price analysis thereof, and performance/delivery schedule.

(D) Identification of the type of subcontract to be used.

(vii) Offeror shall briefly describe organization policies in the following areas (published policies may be furnished):

(A) Salary increases to include:

(aa) Merit.

(bb) Cost of living.

(cc) General.

(B) Travel/subsistence

(C) Consultant use and terms of agreements

(viii) Offerors lacking Government approved indirect cost rates must provide detailed background date indicating the cost elements included in the applicable pool and a statement that such treatment is in accordance with the established accounting practice. Offerors with established rate agreements with Federal cognizant agencies shall submit one copy of such agreement.

(ix) Offeror shall—

(A) Provide CPA certified balance sheet, profit/loss statement and statement of retained earnings covering each of the offeror's last three annual accounting periods.

(B) Specify the financial capacity, working capital and other resources available to perform the contract without assistance from any outside source.

(C) Provide the name, location, and intercompany pricing policy for other divisions, subsidiaries, parent company, or affiliated companies that will perform work or furnish materials under this contract.

(D) Provide an estimated cash flow. Each offeror is required to submit a schedule of proposed monthly costs for the planned duration of the project.

(End of provision)

Alternate I (FEB 1988). As prescribed in 415.407(a)(2), insert a provision substantially as follows:

INSTRUCTIONS FOR THE PREPARATION OF TECHNICAL AND BUSINESS PROPOSALS—ALTERNATE I (FEB 1988)

The proposals submitted in response to this solicitation shall be formatted as follows and furnished in the number of copies stated below. A cover letter may accompany the proposal to set forth any information the offeror wishes to bring to the attention of the Government. Any exceptions or deviations to the Statement of Work or other provisions of this solicitation must be clearly set forth in this cover letter. The proposal shall consist of the following volumes and must include all requested information. The resulting contract shall consist of the following volumes and any amendments to the solicitation.

(a) *Standard Form of Contract* (Volume 1). This volume of the proposal shall consist of the offer (Sections A through K).

(b)(1) *Technical Proposal* (Volume 2). This volume of the proposal shall consist of the following parts which are limited to directly responding to the information sought by the Government's Statement of Work. Offerors are specifically cautioned that this volume must not contain any discussion or references to price and/or cost. The technical proposal shall include *UNPRICED* details of labor hours, materials, and other direct cost elements.

(2) The technical proposal will be used in the evaluation of a firm's capability to perform the required services. Therefore, the proposal must present sufficient information to reflect a thorough understanding of the work requirements and detailed practical program for achieving the objectives of the scope of work. Proposals which merely paraphrase the requirements of the Government's scope of work or parts thereof, or use such phrases as "will comply" or "standard techniques will be employed" will be considered non-responsive to this request for proposal and will not be considered further. The technical proposal must include a detailed description of the techniques and procedures to be employed in achieving the proposed end results in compliance with the requirements of the Government's statement of work.

NOTE: Offerors are hereby advised that the Government will have the right to use, duplicate, or disclose in any manner and for any purpose whatsoever, and have the right to permit others to do so, all subject data required to be delivered under any contract resulting from this solicitation. Any reservations regarding these Government rights to data should be stated in the proposal and will be resolved during any subsequent negotiations.

(3) The technical proposal shall be formatted and submitted as follows:

(a)

(1)

(i)

(A)

(i) Similar Experience. List up to five (5) contracts of a nature and complexity similar to this proposed contract that were awarded or performed within the past five years or are currently in force. For each contract listed, give the following information:

(A) Name, address, and telephone number of the contracting organization, the Government's Project Officer, and Contracting Officer.

(B) Contract number, type, and dollar value.

(C) Date of contract and period of performance.

(D) Average number of technical personnel (by labor skill) involved.

(E) Percentage turnover of contract technical personnel/year.

(F) Brief description of contract work, scope, and responsibilities.

(G) Discussion of the similarities and differences between this proposed effort and that contract.

(H) If the contract(s) cited were "Award Fee" contract(s), list the ratings given during the life of the contract.

(I) If the contract(s) cited were of a cost-reimbursement nature, describe the experiences in performing the contract at, or below, the contract's monetary ceiling.

(ii) Key Personnel. This section shall describe the key personnel who will be assigned to manage performance and supervise the work under this contract. Information is required which will show each key person's general qualifications and recent experience with similar projects or contracts. For those key personnel who will not be assigned fulltime to this contact, show the approximate percentage of time each will be available for this contract.

(A) Résumés are required which will indicate education, background, recent experience, and specific pertinent accomplishments.

(B) Describe additional personnel, if any, who will be required for full-time employment on a subcontract basis. The technical areas, character, and extent of subcontract activity shall be stated and the anticipated sources will be specified and qualified.

(c) Cost/Business Proposal (Volume 3). This volume shall be divided into two major sections: Section (1), "Business/Management Proposal" and Section (2), Cost Proposal. These sections shall be formatted as follows:

(1) Business/Management Proposal. This section shall consist of the offeror's outline, addressing the business/management aspects of this procurement, the resources the offeror will use and how the offeror will use them. Since the Business/Management Proposal will be evaluated to determine such matters as a contractor's potential for completing the required work, it should be specific and complete. It must contain the information specified below in the following general format:

(i) Cover Page--At a minimum, the cover page must contain the Solicitation number, summary of service to be performed, name and address or organizational unit which would be responsible for this operation, and date.

(ii) Table of Contents.

(iii) List of Exhibits.

(iv) Business/Management Discussion. This section shall include the following:

(A) Financial Condition, Capability, and Corporate Utility.

(aa) Furnish financial statements for the last three years, including an interim statement for the current year, unless previously provided to the office issuing the RFP, in which case a statement as to when and where this information was provided may be furnished instead.

(bb) State what percentage this proposed contract will represent of the offeror's estimated total business during the period of performance (e.g. offeror may state "less than 25 percent" if such is the case).

(cc) State the distribution of the last complete fiscal year's sales and volumes between commerical business, Government prime contracts and subcontracts under Government prime contracts.

(B) Suitability of Business Management Organization and Controls. Furnish a brief narrative of the proposing entity (corporate or management unit with primary responsibility for the overall effort) including the following:

(aa) The offeror must demonstrate the ability to implement Government procurement and subcontracting administrative procedures dealing with programs having a similar scope and magnitude and the ability to excercise Government accounting, property, inventory, and cash management procedures dealing with programs having a similar scope and magnitude.

(bb) Describe the means by which the financial reporting required in the resultant contract will be accomplished. Discuss the adequacy and adaptability of the proposed reporting system and detail the flow of cost and manpower information through the accounting system into the final report format. The approving authority for each report should be designated and should be responsible for both accuracy and timeliness of reports. Cost and manpower reporting shall be furnished from the same data base and time span.

(cc) Describe any management procedures or systems developed expressly for this proposed contract and provide the rationale thereof.

(dd) Have all contractor systems, such as accounting, purchasing, estimating, etc., which require Government approval been approved without condition? If not, explain any existing conditional approvals and the status of any for which approval is currently withheld.

(C) Priority placed by the Corporate Level of the Offeror on the work being proposed. Demonstrate the amount of corporate commitment. Describe what level of home/corporate support can be expected during the performance of any resultant contract. Indicate at what level of offeror's structure this support will be provided.

(D) Contract History. For those contracts listed in the technical proposal (volume 2), provide the following:

(aa) Contracting organization name, address and phone number of the Technical Officer and of the Contracting Officer.

(bb) Contract number, contract type, and total value.

(cc) Date of contract and period of performance.

(dd) Average number of technical personnel (by labor skill) involved.

(ee) Percentage turnover of contract technical personnel/year.

(ff) Brief description of contract work scope and responsibilities.

(gg) Method of acquiring the contract—noncompetitively or competitively. If competitively, comment as the basis of competitive award (price, delivery schedule, technical merit, etc.).

(hh) Nature of the award—initial award or a follow-on to an existing contract. If an initial award, indicate whether the award was preceded by a Government or customer financed study or by the offeror's financed study.

(ii) Average percentage of available award fee earned on each cost-plus-award-fee contract.

(jj) Description of firm's experience in performing the contract at, or below, the contracts, monetary ceilings. In addition, the offeror must list any contract(s) terminated (partial or complete) within the past five (5) years and include the contract number, name, address, and telephone of the terminating officer. The offeror must describe its ability to estimate programs and monitor costs and expenditures in an orderly manner in sufficient depth to accomplish management goals and ensure cost and budgetary controls.

(E) Compliance with Equal Employment Opportunity Requirements. The offeror's proposal should discuss company policy and practices in regard to compliance with the solicitation's provisions entitled "Equal Opportunity." Indicate what positive efforts your company will take to implement the concepts of equal employment under the proposed contract.

(F) Extent of Proposed Small Business and Minority Enterprise Participation in Subcontract Requirement. Any goals the contractor has set in the past five (5) years and his actual performance against these goals.

(G) Summary of Deviations/Exceptions in the Business Management Proposal. The offeror will explain any deviations, exceptions, or conditional assumptions taken with respect to the information requested in this Business/Management Proposal. Any exceptions taken must carry sufficient amplification and justification to permit evaluation. Such exceptions will not, of themselves, automatically cause a proposal to be termed unacceptable. A large number of exceptions, or one or more significant exceptions not providing any obvious benefit to the Government, may however, result in rejection of the proposal.

(2) Cost Proposal.

(i) General. This section shall consist of the offeror's costs to perform the work outlined in the Statement of Work. Cost proposals must be fully supported by cost and pricing data adequate to establish reasonableness of the proposed amount using the Standard Form 1411, Contract Pricing Proposal. The offeror shall furnish a cost breakdown with supporting data, including a breakdown of direct labor cost estimates by major functional areas including numbers of person-hours and applicable actual average hourly rates.

(ii) Realism in Request for Proposals. An offeror's proposal is presumed to represent his best efforts to respond to the solicitation. Any inconsistency, whether real or apparent, between promised performance, and cost or price, should be explained in the proposal. For example, if the intended use of new and innovative production techniques is the basis for an abnormally low estimate, the nature of these techniques and their impact on cost or price should be explained; or, if a corporate policy decision has been made to absorb a portion of the estimated cost, that should be stated in the proposal. Any significant inconsistency, if unexplained, raises a fundamental issue of the offeror's understanding of the nature and scope of the work required and of his financial ability to perform the contract, and may be grounds for redjection of the proposal, subject to the requirements for discussions to be held with those offerors in the competitive range pursuant to the Federal Acquisition Regulation. The burden of proof as to cost credibility rests with the offeror.

(iii) Contents. In addition to providing information to support costs as explained below, full supporting schedules must be provided as exhibits to the SF1411 to explain all elements of proposed costs.

(A) Phase-in Period. A fully executed Standard Form 1411 covering the initial phase-in period shall be furnished. All costs associated with this period of performance shall be fully documented and justified. A narrative explanation of all anticipated costs, and the distribution and placement of personnel and other resources shall be included.

(B) Initial Period. A fully executed Standard Form 1411 covering the initial period of performance (as defined in the Schedule) shall be furnished. All projected costs associated with the period shall be fully documented and justified. Costs associated with the direct labor shall be justified with accompanying documentation showing the functional and organizational distribution of the contractor's resources.

(C) First Optional Period of Performance. A fully executed Standard Form 1411 covering the First Optional Period of Performance (as defined in the Schedule) shall be furnished in the same detail as required for the Initial Period of Performance.

(D) Second Optional Period of Performance. A fully executed Standard Form 1411 covering the Second Optional Period of Performance (as defined in the Schedule) shall be furnished in the same detail as required for the Initial Period of Performance. The offeror shall explain the basis and rationale for any escalation factors applied to this period.

(E) Third Optional Period of Performance. A fully executed Standard Form 1411 covering the Third Optional Period of Performance (as defined in the Schedule) shall be furnished in the same detail as required for the Initial Period of Performance. The offeror shall explain the basis and rationale for any escalation factors applied to this period.

(F) Fourth Optional Period of Performance. A fully executed Standard Form 1411 covering the Fourth Optional Period of Performance (as defined in the Schedule) shall be furnished in the same detail as required for the Initial Period of Performance. The offeror shall explain the basis and rationale for any escalation factors applied to this period.

(iv) Overhead and G&A. This section will explain the basis for any corporate labor overhead and general and administrative (G&A) charges anticipated. The data shall be prepared for each of the offeror's two previously completed fiscal years and the current fiscal year. Offerors must provide detailed background data indicating the cost elements included in the overhead, G&A, or indirect pool, and a statement that such treatment is in accordance with its established accounting practice and represents an equitable distribution.

(v) Proposed Ceilings on Overhead and G&A. The offeror shall list in this section of the cost proposal its proposed ceiling for overhead and G&A. A statement will be required for any deficiencies between the proposed ceiling rate(s) and those used for forward pricing purposes.

(End of provision)

452.215-72 Amendments to Proposals.

As prescribed in 415.407(b), insert the following provision:

AMENDMENTS TO PROPOSALS (FEB 1988)

Any changes to a proposal made by the offeror after its initial submittal shall be accomplished by replacement pages. Changes from the original page shall be indicated on the outside margin by vertical lines adjacent to the change. The offeror shall include the date of the amendment on the lower right corner of the changed pages.

(End of provision)

452.215-73 Submission of Proposals.

As prescribed in 415.407(c), insert a provision substantially as follows:

SUBMISSION OF PROPOSALS (FEB 1988)

All proposals shall be submitted in the formats and quantities specified below:

(a) Standard Form 33—one (1) original and ——*—— copies

(b) Technical Proposal— ——*—— copies

(c) Cost/Price Proposal— ——*—— copies

(End of provision)

**Contracting Officer shall insert number for required copies.*

452.215-74 General Financial and Organizational Information.

As prescribed in 415.407(d), insert a provision substantially as follows:

GENERAL FINANCIAL AND ORGANIZATIONAL INFORMATION (FEB 1988)

Offerors are requested to provide information regarding the following items in sufficient detail to allow a full and complete business evaluation. If the question indicated is not applicable or the answer is none, it should be annotated. If the offeror has previously submitted the information, it should certify the validity of that data currently on file at USDA or update all outdated information on file.

(a) Offeror's Name: ——————

(b) Address (If financial records are maintained at some other location, show the address of the place where the records are kept):

——————————

(c) Telephone Number: ——————

(d) Individual(s) to contact regarding this proposal: ——————

(e) Cognizant Government Audit Agency:

——————————

Address: ——————

Auditor: ——————

(f) Work Distribution for Last Completed Fiscal Accounting Period.

(1) Sales:

Government cost-reimbursement type prime contracts and subcontracts: $——————

Government fixed-price prime contracts and subcontracts: $ ——————

Commercial Sales: $ ——————

Total Sales: $ ——————

(2) Total Sales for offeror's first and second fiscal years immediately preceding last completed fiscal year.

Total Sales for First Preceding Fiscal Year: $ ——————

Total Sales for Second Preceding Fiscal Year: $ ——————

(g) Is company a separate entity, divisions or subsidiary corporation?

Yes —————— No ——————

If yes, name the parent company:

——————————

(h) Date Company Organized: ——————

(i) Staffing:

(1) Total Employees: ——————

(2) Direct: ——————

(3) Indirect: ——————

(4) Standard Work Week (Hours): ——————

(j) Commercial Projects: ——————

(k) Attach a current organizational chart of the company.

(l) Estimating System.

(1) Description of offeror's system of estimating and accumulating costs under Government contracts. (Check appropriate blocks.)

	Estimated/ actual cost	Standard cost
Estimating System:		
Job Order		
Process		
Accumulating System:		
Job Order		

	Estimated/ actual cost	Standard cost
Process		

(2) Has the offeror's cost estimating system been approved by a Government Agency?

Yes ———— No ————

If yes, give name and address of the agency:

---

(3) Has the offeror's cost accumulation system been approved by any Government agency?

Yes ———— No ————

If yes, give name and address of the agency:

(m) What is the offeror's fiscal year period? (Give starting month and ending month):

What were the indirect cost rates for the last completed fiscal year?

Fiscal year	Indirect cost rate	Basis of allocation
Fringe Benefits		
Overhead		
G&A Expense		
Other		

(n) Have the proposed indirect cost rate(s) been evaluated and accepted by any Government agency?

Yes ———— No ————

If yes, give name and address of the agency:

Date of last pre-award audit review by a Government agency: ————

(If the answer is no, data supporting the proposed rates must accompany the cost or price proposal. A breakdown of the items comprising overhead and G&A must be furnished.)

(o) Cost estimating is performed by:

Accounting Department ————

Contracting Department ————

Other (describe) ————

(p) Has system of control of Government property been approved by a Government agency?

Yes ———— No ————

If yes, give name and address of the agency:

(q) Purchasing Procedures:

Are purchasing procedures written?

Yes ———— No ————

Has the purchasing system been approved by a Government agency?

Yes ———— No ————

If yes, give name and address of the agency:

(r) Does the offeror have an established written incentive compensation or bonus plan?

Yes ———— No ————

(End of provision)

452.215-75 Definition of Labor Classifications.

As prescribed in 415.407(e), insert a provision substantially as follows:

DEFINITION OF LABOR CLASSIFICATIONS (FEB 1988)

Offerors shall use the following labor classifications in preparing their technical and cost proposals.

(a) Definition of labor classifications. The direct labor hours appearing below are for professionals and technicians only. These hours do not include management at a level higher than the project management and clerical support staff at a level lower than technician. If it is the contractor's normal practice to charge these types of personnel as a direct cost, the proposal must include them along with an estimate of the directly chargeable staff-hours for these personnel. If this type of effort is normally included in indirect cost allocations, no estimate is required. However, direct charging of indirect costs on any resulting contract will not be allowed. Additionally, the hours below are the workable hours required by the Government and do not include release time (i.e., holiday, vacation, etc.).

(b) Distribution of level of effort. Proposals must utilize the labor categories and distribution of the level of effort specified below:

	Basic quantity	Optional quantity
Professional Level IV:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		
Professional Level III:		
Base Period		
Option Period I		
Option Period II		

	Basic quantity	Optional quantity
Option Period III		
Option Period IV		
Professional Level II:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		
Professional Level I:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		
Technical Level III:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		
Technical Level II:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		
Technical Level I:		
Base Period		
Option Period I		
Option Period II		
Option Period III		
Option Period IV		

	Basic quantity	Optional quantity	Total quantity
Summary: Base Period			
Option Period I			
Option Period II			
Option Period III			
Option Period IV			

(c) When identifying individuals assigned to the project, the proposal must specify in which of the above categories the identified individual belongs. If the contractor proposes an average rate for a company classification, the proposal must identify the professional or technical level within which each company category falls.

(d) The proposal shall also include Standard Forms 1411 for each of the following:

(1) A summary proposal for the total contract period

(2) For each contract period:

(i) A summary proposal

(ii) A proposal for the basic quantity

(iii) A proposal of —— hours for the option quantity

(End of provision)

452.215-76 Postaward Conference.

As prescribed in 415.1070, insert a clause substantially as follows:

POST AWARD CONFERENCE (FEB 1988)

A post award conference with the successful offeror is required. It will be scheduled and held within 15 days after the date of contract award. The conference will be held at: ——*——.

(End of clause)

**Contracting Officer shall insert appropriate address.*

452.216-70 Award Fee.

As prescribed in 416.405, insert a clause substantially as follows:

AWARD FEE (FEB 1988)

The amount of award fee the Contractor earns, if any, is based on a subjective evaluation by the Government of the quality of the Contractor's performance in accordance with the award fee plan. The Government will determine the amount of award fee every ——*—— months beginning with ——**——. The Fee Determination Official (FDO) will unilaterally determine the amount of award fee. The FDO's determination will be in writing to the Contractor and is not subject to the "Disputes" clause. The Government may unilaterally change the award fee plan at any time and will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period. The Contractor may submit a voucher for the earned award fee. Available award fee not earned during one period does not carry over to subsequent periods.

(End of clause)

Contracting Officer shall insert appropriate number of months.

***Contracting Officer shall insert appropriate date.*

452.216-71 Base Fee and Award Fee Proposal.

As prescribed in 416.405, insert the following provision:

BASE FEE AND AWARD FEE PROPOSAL (FEB 1988)

For the purpose of this solicitation, offerors shall propose a base fee of ——*—— percent of the total estimated cost proposed. The award fee shall not exceed ——*—— percent of the total estimated cost.

(End of provision)

**Contracting Officer shall insert appropriate percentages.*

452.216-72 Evaluation Quantities—Indefinite Delivery Contract.

As prescribed in 416.505, (a), insert a provision substantially as follows:

EVALUATION QUANTITIES—INDEFINITE-DELIVERY CONTRACT (FEB 1988)

To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation, and will add other direct costs if applicable.

(End of provision)

452.216-73 Minimum and Maximum Contract Amounts.

As prescribed in 416.505(b), insert the following clause:

MINIMUM AND MAXIMUM CONTRACT AMOUNTS (FEB 1988)

During the period specified in FAR clause 52.216-18, ORDERING, the Government shall place orders totalling a minimum of ——*——, but not in excess of ——*——.

(End of clause)

**Contracting Officer shall insert appropriate quantity or dollar amounts.*

452.216-74 Ceiling Price.

As prescribed in 416.670, insert the following clause:

CEILING PRICE (FEB 1988)

The ceiling price of this contract is $ —— * ——. The Contractor shall not make expenditures or incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the Contractor's own risk.

(End of clause)

**Contracting Officer shall insert appropriate dollar amount.*

452.216-75 Letter Contract.

As prescribed in 416.603-4, insert the following clause:

LETTER CONTRACT (FEB 1988)

This contract replaces letter contract No. —— * —— dated —— * —— and all amendments thereto.

(End of clause)

**Contracting Officer shall insert number and date.*

452.217-70 Option To Extend the Term of the Contract—Cost-Plus-Fixed-Fee Contract.

As prescribed in 417.208(a), insert a clause substantially as follows:

OPTION TO EXTEND THE TERM OF THE CONTRACT—COST-PLUS-FIXED-FEE CONTRACT (FEB 1988)

(a) The Government has the option to extend the term of this contract for the additional period(s) indicated in paragraph (b)(1) of this clause. If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) Exercise of an option will result in the following contract modifications:

(1) The "Period of Performance" clause (452.212-73) is modified for each respective option period as follows:

Period	Start date	End date
Option Period I	—*—	—*—
Option Period II	—*—	—*—
Option Period III	—*—	—*—
Option Period IV	—*—	—*—

(2) Paragraph (a) of the "Level of Effort" clause (452.212-70) is modified to reflect new and separate level(s) of effort for each respective option period as follows:

Period	Level of effort (direct labor hours)
Option Period I	—*—
Option Period II	—*—
Option Period III	—*—
Option Period IV	—*—

(3) The "Estimated and Allowable Cost" clause (452.242-70) is modified to reflect increased estimated costs and fixed-fees for each respective option period as follows:

Period	Estimated cost	Fixed fee	Total
Option Period I.	—*—	—*—	—*—
Option Period I.	—*—	—*—	—*—
Option Period I.	—*—	—*—	—*—
Option Period I.	—*—	—*—	—*—

(4) If this contract contains "not to exceed amounts" for elements of other direct costs (ODC), those amounts are increased as follows:

Period	Other direct cost items
Option Period I	—*—
Option Period II	—*—
Option Period III	—*—
Option Period IV	—*—

**Contracting Officer shall insert number for additional period(s), as well as dates, quantities, and amounts in paragraphs (a) through (d).*

(End of clause)

Alternate I (Feb 1988). As prescribed in 417.208(a), substitute a paragraph (b)(2) substantially as follows:

(2) During the option period(s) the Contractor shall provide the services described below:

Period	Attachment
Option Period I	—*—
Option Period II	—*—
Option Period III	—*—
Option Period IV	—*—

**Contracting Officer shall insert number for additional period(s), as well as dates, quantities, and amounts in paragraphs (a) through (d).*

452.217-71 Option to Extend the Term of the Contract—Cost-No-Fee Contract.

As prescribed in 417.208(b), insert a clause substantially as follows:

OPTION TO EXTEND THE TERM OF THE CONTRACT—COST-NO-FEE CONTRACT (FEB 1988)

(a) The Government has the option to extend the term of this contract for —*— additional period(s). If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This prelimiary notification does not commit the Government to exercising the option.

(b) Exercise of an option will result in the following contract modifications:

(1) The "Period of Performance" clause (452.212-73) is modified for each respective option period as follows:

Period	Start date	End date
Option Period I	—*—	—*—
Option Period II	—*—	—*—
Option Period III	—*—	—*—
Option Period IV	—*—	—*—

(2) Paragraph (a) of the "Level of Effort" clause (452.212-70) is modified to reflect new and separate level(s) of effort for the respective option periods as follows:

Period	Level of effort (direct labor hours)
Option Period I	———*———
Option Period II	———*———
Option Period III	———*———
Option Period IV	———*———

(3) The "Estimated and Allowable Cost" clause (452.242-70) is modified to reflect increased estimated costs for the respective option periods as follows:

Period	Estimated cost
Option Period I	$——*——
Option Period II	$——*——
Option Period III	$——*——
Option Period IV	$——*——

(4) If this contract contains "not to exceed amounts" for elements of other direct costs (ODC), those amounts are increased as follows:

Period	Other direct cost items
Option Period I	$——*——
Option Period II	$——*——
Option Period III	$——*——
Option Period IV	$——*——

**Contracting Officer shall insert number for additional period(s), as well as dates, quantities, and amounts in paragraphs (a) through (d).*

(End of clause)

Alternate I (Feb 1988). As prescribed in 417.208(b) insert a paragraph (b)(2) substantially as follows:

(2) During the option period(s) the Contractor shall provide the services described below:

Period	Attachment
Option Period I	———*———
Option Period II	———*———
Option Period III	———*———
Option Period IV	———*———

**Contracting Officer shall insert number for additional period(s), as well as dates, quantities, and amounts in paragraphs (a) through (d).*

452.217-72 Option To Extend the Term of the Contract—Cost-Plus-Award-Free Contract.

As prescribed in 417.208(c), insert a clause substantially as follows:

OPTION TO EXTEND THE TERM OF THE CONTRACT—COST-PLUS-AWARD-FEE CONTRACT (FEB 1988)

(a) The Government has the option to extend the term of this contract for ——*—— additional periods. If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) Exercise of an option will result in the following contact modifications:

(1) The "Period of Performance" clause (452.212-73) is modified for each respective option period as follows:

Period	Start date	End date
Option Period I	——*——	——*——
Option Period II	——*——	——*——
Option Period III	——*——	——*——
Option Period IV	——*——	——*——

(2) Paragraph (a) of the "Level of Effort" clause (452.212-70) is modified to reflect new and separate level(s) of effort for each respective option period as follows:

Period	Level of effort (direct labor hours)
Option Period I	———*———
Option Period II	———*———
Option Period III	———*———
Option Period IV	———*———

(3) The "Estimated and Allowable Cost" clause (452.242-70) is modified to reflect increased estimated costs and base fee and award fee pool for each respective option period as follows:

Period	Estimated cost	Base fee	Award fee pool	Total
Option Period I.	—*—	—*—	—*—	—*—
Option Period II.	—*—	—*—	—*—	—*—
Option Period III.	—*—	—*—	—*—	—*—
Option Period IV.	—*—	—*—	—*—	—*—

(4) If this contract contains "not to exceed amounts" for elements of other direct costs (ODC), those amounts are increased as follows:

Period	Other direct cost Items
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

**Contracting Officer shall insert number for additional period(s), as well as dates, quantities, and amounts in paragraphs (a) through (d).*

(End of clause)

Alternate I (Feb 1988). As prescribed in 417.208(c), substitute a paragraph (b)(2) substantially as follows:

(2) During the option period(s) the Contractor shall provide the services described below:

Period	Attachment
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

**Contracting Officer shall insert number for additional period(s), as well as dates, quantities, and amounts in paragraphs (a) through (d).*

452.217-73 Option for Increased Quantity—Cost-Plus-Fixed-Fee Contract.

As prescribed in 417.208(d), insert a clause substantially as follows:

Option for Increased Quantity—Cost-Plus-Fixed-Fee Contract (Feb 1988)

(a) By issuing a contract modification exercising the option, the Government may increase the estimated level of effort by:

Period	Level of effort (direct labor hours)
Base Period	——*——
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

(b) The Government may issue a maximum of ——*—— orders to increase the level of effort in blocks of ——*—— hours during any given period.

(c) The estimated cost of each block of hours is as follows:

Period	Estimated cost	Fixed fee	Total cost
Base Period	*$—	*$—	*$—
Option Period I	*$—	*$—	*$—
Option Period II	*$—	*$—	*$—
Option Period III	*$—	*$—	*$—
Option Period IV	*$—	*$—	*$—

(d) When these options are exercised, paragraph (a) of the "Level of Effort" clause (452.212-70) and the "Estimated and Allowable Cost" clause (452.242-70) will be modified accordingly.

(End of clause)

**Contracting Officer shall insert appropriate quantities as well as amounts of hours and dollars.*

452.217-74 Option for Increased Quantity—Cost-No-Fee Contract.

As prescribed in 417.208(e), insert a clause substantially as follows:

Option for Increased Quantity—Cost-No-Fee Contract (Feb 1988)

(a) By issuing a contract modification exercising the option, the Government may increase the estimated level of effort by:

Period	Level of effort (direct labor hours)
Base Period	——*——
Option Period I	——*——
Option Period II	——*——
Option Period III	——*——
Option Period IV	——*——

(b) The Government may issue a maximum of ——•—— orders to increase the level of effort in blocks of ——•—— hours during any given period.

(c) The estimated cost of each block of hours is as follows:

Period	Estimated cost
Base Period	$——•——
Option Period I	$——•——
Option Period II	$——•——
Option Period III	$——•——
Option Period IV	$——•——

(d) When these options are exercised, paragraph (a) of the "Level of Effort" clause (452.212-70) and the "Estimated and Allowable Cost" clause (452.242-70) will be modified accordingly.

(End of clause)

**Contracting Officer shall insert appropriate quantities as well as amounts for hours and dollars.*

452.217-75 Option for Increased Quantity—Cost-Plus-Award-Fee Contract.

As prescribed in 417.208(f), insert a clause substantially as follows:

OPTION FOR INCREASED QUANTITY—COST-PLUS-AWARD-FEE CONTRACT (FEB 1988)

(a) By issuing a contract modification exercising the option, the Government• may increase the estimated level of effort by:

Period	Level of effort (direct labor hours)
Base Period	——•——
Option Period I	——•——
Option Period II	——•——
Option Period III	——•——
Option Period IV	——•——

(b) The Government may issue a maximum of ——•—— orders to increase the level of effort in blocks of ——•—— hours during any given period. The estimated cost, base fee, and award fee pool of each block of hours is as follows:

(c) The estimated cost, base fee, and award fee pool of each block of hours is as follows:

Period	Estimated cost	Base fee	Award fee pool	Total
Base	$—•—	$—•—	$—•—	$—•—
Option I	$—•—	$—•—	$—•—	$—•—
Option II	$—•—	$—•—	$—•—	$—•—
Option III	$—•—	$—•—	$—•—	$—•—
Option IV	$—•—	$—•—	$—•—	$—•—

(d) When these options are exercised, paragraph (a) of the "Level of Effort" clause (452.212-70) and the "Estimated and Allowable Cost" (452.242-70) clause will be modified accordingly.

(End of clause)

**Contracting Officer shall insert appropriate quantities as well as amounts for hours and dollars.*

452.217-76 Option to Extend the Effective Period of the Contract—Time-and-Materials or Labor-Hour Contract.

As prescribed in 417.208(g), insert a clause substantially as follows:

OPTION TO EXTEND THE EFFECTIVE PERIOD OF THE CONTRACT—TIME-AND-MATERIALS OR LABOR-HOUR CONTRACT (FEB 1988)

(a) The Government has the option to extend the effective period of this contract for ——•—— additional period(s). If more than 60 days remain in the contract effective period, the Government, without prior written notification, may exercise this option by issuing a contract modification. To unilaterally exercise this option within the last 60 days of the effective period, the Government must issue written notification of its intent to exercise the option prior to that last 60-day period. This preliminary notification does not commit the Government to exercise the option.

(b) Exercise of an option will result in the following modifications:

(1) The "Ceiling Price" clause (452.216-75) is modified to reflect new and separate ceiling prices for each respective option period as follows:

Period	Ceiling price
Option Period I	$——•——
Option Period II	$——•——
Option Period III	$——•——

Period	Ceiling price
Option Period IV	$—•—

(2) The "Effective Period of the Contract" clause (452.212-73) is modified for each respective option period as follows:

Period	Start date	End date
Option Period I	—•—	—•—
Option Period II	—•—	—•—
Option Period III	—•—	—•—
Option Period IV	—•—	—•—

**Contracting Officer shall insert appropriate number and dates.*

(End of clause)

452.217-77 Option to Extend the Effective Period of the Contract—Indefinite-Delivery/Indefinite-Quantity Contract.

As prescribed in 417.208(h), insert a clause substantially as follows:

OPTION TO EXTEND THE EFFECTIVE PERIOD OF THE CONTRACT—INDEFINITE-DELIVERY/INDEFINITE-QUANTITY CONTRACT (FEB 1988)

(a) The Government has the option to extend the effective period of this contract for —•— additional period(s). If more than 60 days remain in the contract effective period, the Government, without prior written notification, may exercise this option by issuing a contract modification. To unilaterally exercise this option within the last 60 days of the effective period, the Government must issue written notification of its intent to exercise the option prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) Exercise of an option will result in the following modifications:

(1) The "Minimum and Maximum Contract Amount" Clause (452.216-75) is modified to reflect new and separate maximum amounts as follows:

Period	Minimum amount	Maximum amount
Option Period I.	$—•—	$—•—
Option Period II.	$—•—	$—•—
Option Period III.	$—•—	$—•—
Option Period IV.	$—•—	$—•—

(2) The "Effective Period of the Contract" Clause (452.212-73) will be modified as follows:

Period	Start date	End date
Option Period I	—•—	—•—
Option Period II	—•—	—•—
Option Period III	—•—	—•—
Option Period IV	—•—	—•—

**Contracting Officer shall insert appropriate quantity as well as other amount of hours or dollars and dates.*

(End of clause)

452.217-78 Option to Extend the Term of the Contract—Fixed-Price Contract.

As prescribed in 417.208(i), insert a clause substantially as follows:

OPTION TO EXTEND THE TERM OF THE CONTRACT—FIXED-PRICE CONTRACT (FEB 1988)

(a) The Government has the option to extend the term of this contract for —•— additional period(s). If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) Exercise of an option will result in the following contract modifications:

The "Period of Performance" clause will be modified as follows:

Period	Start date	End date
Option Period I	—•—	—•—
Option Period II	—•—	—•—
Option Period III	—•—	—•—
Option Period IV	—•—	—•—

**Contracting Officer shall insert appropriate number and dates.*

(End of clause)

452.217-79 Option for Increased Quantity—Fixed-Price Contract.

As prescribed in 417.208(j), insert a clause substantially as follows:

OPTION FOR INCREASED QUANTITY—FIXED-PRICE CONTRACT (FEB 1988)

(a) The Government may increase the quantity of work called for under this contract as follows:

Optional Items ——*——
Quantity ——*——
Unit Price ——*——
Delivery Date ——*——

(b) The Contracting Officer may exercise an option by written notice to the Contractor within the following time periods:

Optional Items ——*——
Time Period for Exercising Option *——

**Contracting Officer shall insert appropriate data in paragraphs (a) and (b).*

452.219-70 Set-Aside/Size Standard Information.

As prescribed in 419.304, insert the following provision:

SET-ASIDE/SIZE STANDARD INFORMATION (FEB 1988)

This solicitation includes the following set-aside and/or size standard criteria:

(a) Percent of the set-aside ——*——
(b) Type of set-aside ——*——
(c) Small business size standard or other criteria ——*——
(d) Standard Industrial Classification (SIC) Code ——*——

(End of clause)

**Contracting Officer shall insert appropriate data.*

452.222-70 Service Contract Act of 1965—contracts of $2,500 or less.

As prescribed in 422.7002, insert the following clause:

SERVICE CONTRACT ACT OF 1965—CONTRACTS OF $2,500 OR LESS (FEB 1988)

Except to the extent that an exemption, variation, or tolerance would apply if this contract were in excess of $2,500, the contractor and any subcontractor shall pay all employees working on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-206). Regulations and interpretations of the Service Contract Act of 1965 are contained in 29 CFR Part 4.

(End of clause)

452.222-71 Service Contract Act of 1965.

As prescribed in 422.200, insert the following clause:

SERVICE CONTRACT ACT OF 1965 (FEB 1988)

(a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq).

"Contractor," as used in this clause in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The contractor shall submit a report of the proposed conforming action including information whether the authorized representative of the employees or nonrepresented employees on their own behalf agree with the action proposed, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the Contractor's conforming action report and all other pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subparagraph (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2), the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to Furnish Fringe Benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) above by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum Wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor Contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective-bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.10 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in 29 CFR 4.10, that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding or substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to Employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and Sanitary Working Conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subparagraph (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay Periods*. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of Payments and Termination of Contract*. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional costs.

(l) *Subcontracts*. The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective Bargaining Agreements Applicable to Service Employees*. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract. In the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority List*. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings an Interpretations*. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's Certification*. (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations*. Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the fair labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annual, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform, when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registerd with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any Employee who is not registered as an apprentice in an approval program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR Part 531. However, the amount of credit shall not exceed $1.34 per hour beginning January 1, 1981. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes Concerning Labor Standards* The United States Department of Labor has set forth in 29 CFR Parts, 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

452.222-72 Statement of Equivalent Rates for Federal Hires.

As prescribed in 422.7003(b), insert the following clause in solicitations and contracts.

STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (FEB 1988)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees exected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION

Employee Class:

____

____

Monetary Wage—Fringe Benefits:

____

____

(End of clause)

452.222-73 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

As prescribed in 422.7003(b), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (FEB 1988)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with:

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(c) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (b) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; It shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(e) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

452.224-70 Confidentiality of Information.

As prescribed in 424 104(b), insert a clause substantially as follows:

CONFIDENTIALITY OF INFORMATION (FEB 1988)

(a) Confidential information, as used in this clause, means: (1) Information or data of a personal nature, proprietary about an individual, or (2) information or data submitted by or pertaining to an institution or organization.

(b) In addition to the types of confidential information described in (a)(1) and (2) above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research during which public disclosure of primarily invalidated findings could create an erroneous conclusion which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the "Disputes" clause.

(d) If it is established that information to be utilized under this contract is subject to the Privacy Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(e) Confidential information, as defined in (a)(1) and (2) above, shall not be disclosed without the prior written consent of the individual, institution or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in

(b) above. If the Contracting Officer does not pose any objections in writing within the 45 day period, the contractor may proceed with disclosure. Disagreements not resolved by the Contractor and Contracting Officer will be settled pursuant to the "Disputes" clause.

(g) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor shall obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(h) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

(End of clause)

452.225-70 English Language and U.S. Currency Requirements.

As prescribed in 425.407, insert the following provision:

ENGLISH LANGUAGE AND U.S. CURRENCY REQUIREMENTS (FEB 1988)

An offer of a designated country end product or a Caribbean Basin country end product permitted under the provisions of the Trade Agreements Act of 1979, shall be submitted in the English language in U.S. dollars.

(End of clause)

452.228-70 Notice of Required Bid Guarantee.

As prescribed in 428.102-3(a), insert the following provision:

NOTICE OF REQUIRED BID GUARANTEE (FEB 1988)

If a bid exceeds $25,000 the bidder must submit a bid guarantee in the amount of —*— percent of the total bid price, but in no event shall the penal sum exceed $3 million. If a bid bond is sumbitted, it should be on Standard Form 24. Money orders, cashiers checks, or certified checks, if used, shall be drawn payable to: —**—.

(End of provision)

**Contracting Officer shall insert appropriate percentage, but not less than 20 percent.*

***Contracting Officer shall insert the name of the USDA contracting activity.*

452.228-71 Notice of Required Performance Security.

As prescribed in 428.102-3(b), insert the following provision:

NOTICE OF REQUIRED PERFORMANCE SECURITY (FEB 1988)

If the contract exceeds $25,000, the successful offeror shall furnish security to guarantee faithful performance of the contract in the amount of —*— percent of the total contract price. Security may be in the form of a performance bond on Standard Form 25 (furnished on request), or in the form of a certified or cashier's check, bank draft, U.S. Postal service money order, or currency, or United States Government bonds or notes (at par value) deposited in accordance with Treasury Regulations. Money orders and checks shall be drawn payable to: —*—.

(End of clause)

**Contracting Officer shall insert appropriate percentage.*

***Contracting Officer shall insert the name of the USDA contracting activity.*

452.228-72 Notice of Required Payment Security.

As prescribed in 428.102-3(c), insert the following clause:

NOTICE OF REQUIRED PAYMENT SECURITY (FEB 1988)

If the contract exceeds $25,000, the successful offeror shall furnish security to guarantee payment to all persons supplying labor or materials in the performance of the contract. Such security may be in the form of a payment bond on Standard Form 25A (furnished on request) or in the form of a certified or cashier's check, bank draft, U.S. Postal Service money order, or currency, or United States Government bonds or notes (at par value) deposited in accordance with Treasury Regulations. Money orders and checks shall be drawn payable to: —*—. The penal sum of the payment bond shall equal:

(a) 50 percent of the contract price, if the contract price is not more than $1 million;

(b) 40 percent of the contract price, if the contract price is more than $1 million but not more than $5 million; or

(c) $2½ million, if the contract price is more than $5 million.

(End of clause)

*Contracting Officer shall insert the name of the USDA contracting activity.

452.228-73 Insurance Coverage.

As prescribed in 428.310, insert the following provision:

INSURANCE COVERAGE (FEB 1988)

Pursuant to FAR clause 52.228-5, Insurance—Work on a Government Installation, the Contractor will be required to present evidence to show, as a minimum, the amounts of insurance coverage indicated below:

(a) Workers Compensation and Employer's Liability. The Contractor is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least $100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers.

(b) General Liability. The Contractor shall have bodily injury liability insurance coverage written on the comprehensive form of policy of at least $500,000 per occurrence.

(c) Automobile Liability. The Contractor shall have automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage.

(d) Aircraft Public and Passenger Liability. When aircraft are used in connection with performing the contract, the Contractor shall have aircraft public and passenger liability insurance. Coverage shall be at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

Alternate I (Feb 1988). As prescribed in 428.310, substitute the following paragraph (b), when additionally the contractor must have property damage liability coverage:

(b) General Liability. (1) The Contractor shall have bodily injury liability coverage written on the comprehensive form of policy of at least $500,000 per occurrence.

(2) Property Damage liability insurance shall be required in the amount of —*—.

**Contracting Officer shall insert amount required.*

452.232-70—452.232-73 [Reserved]

452.232-74 Reimbursement for Bond Premiums—Fixed-Price Construction Contracts.

As prescribed in 432.111(b), insert the following clause:

REIMBURSEMENT FOR BOND PREMIUMS—FIXED-PRICE CONSTRUCTION CONTRACTS (FEB 1988)

The Contract Price includes the total amount for premiums that the Contractor attributes to the furnishing of performance and payment bonds required by the contract. Reimbursement for bond premiums under paragraph (e) of the clause at FAR 52.232-11, Payments Under Fixed-Price Construction Contract, shall not cover any amount therefor not included in the contract price.

(End of clause)

452.236-70 Additive or Deductive Items.

As prescribed in 436.370, insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (FEB 1988)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award therein can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed $100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made on the selected first or base bid item and any combination of additive or deductive items for which funds are determined to be available at the time of the award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of clause)

452.236-71 Prohibition Against the Use of Lead-Based Paint.

As prescribed in 436.571, insert the following clause:

Prohibition Against the Use of Lead-Based Paint (Feb 1988)

(a) For paints manufactured prior to or on June 23, 1977, the following restriction applies:

Neither the Contractor nor any subcontractor performing under this contract shall use paints containing more than 0.5 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(b) For paints manufactured after June 23, 1977, the following restriction applies:

Neither the Contractor nor any subcontractor performing under this contract shall use paints containing more than 0.06 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(End of clause)

452.236-72 Use of Premises.

As prescribed in 436.572, insert the following clause:

Use of Premises (Feb 1988)

(a) Before any camp, quarry, borrow pit, storage, detour, or bypass site, other than shown on the drawings is opened or operated on USDA lands or lands administered by the USDA, the Contractor shall obtain written permission through the Contracting Officer. A camp is interpreted to include a campsite or trailer parking area of any employee working on the project for the Contractor.

(b) Unless excepted elsewhere in the contract, the Contractor shall: (i) provide and maintain sanitation facilities for the workforce at the site and (ii) dispose of solid waste in accordance with applicable Federal, State and local regulations.

(End of clause)

452.236-73 Archaeological or Historic Sites.

As prescribed in 436.573, insert the following clause:

Archaeological or Historic Sites (Feb 1988)

If a previously unidentified archaeological or historic site(s) is encountered, the Contractor shall discontinue work in the general area of the site(s) and notify the Contracting Officer immediately.

(End of clause)

452.236-74 Control of Erosion, Sedimentation and Pollution.

As prescribed in 436.574, insert the following clause:

Control of Erosion, Sedimentation and Pollution (Feb 1988)

(a) Operations shall be scheduled and conducted to minimize erosion of soils and to prevent silting and muddying of streams, rivers, irrigation systems, and impoundments (lakes, reservoirs, etc.).

(b) Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged on the ground; into or near rivers, streams, and impoundments; or into natural or man-made channels. Wash water or waste from concrete or aggregate operations shall not be allowed to enter live streams prior to treatment by filtration, settling, or other means sufficient to reduce the sediment content to not more than that of the stream into which it is discharged.

(c) Mechanized equipment shall not be operated in live streams without written approval by the Contracting Officer.

(End of clause)

452.236-75 Maximum Workweek—Construction Schedule.

As prescribed in 436.575, insert a clause substantially as follows:

Maximum Workweek—Construction Schedule (Feb 1988)

Within 10 days after receipt of a written request from the Contracting Officer, the Contractor must submit the following information in writing for approval:

(a) A construction schedule as required by FAR clause 52.236-15, Schedules for Construction Contracts, and

(b) The hours and days of the week the Contractor proposes to carry out the work.

The maximum workweek that will be approved is ——*——. The Contractor's proposed hours of work are to include daily starting and stopping times.

(End of clause)

**Contracting Officer shall insert appropriate number of hours and/or days.*

452.236-76 Samples and Certificates.

As prescribed in 436.576, insert the following contract clause:

SAMPLES AND CERTIFICATES (FEB 1988)

When required by the specifications or the Contracting Officer, samples, certificates, and test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance with materials and construction specified in the contract performance requirements. Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing by the Contracting Officer.

(End of clause)

452.236-77 Emergency Control.

As prescribed in 436.577, insert the following clause:

EMERGENCY CONTROL (FEB 1988)

(a) *Contractor's Responsibility for Fighting Fire.* The Contractor, under the direction of the Forest Supervisor or, in the absence of said officer, acting independently, shall immediately extinguish all fires on or in the vicinity of the project. If it is determined subsequently by the Contracting Officer that a fire was caused by the Contractor or the Contractor's agents or employees, whether caused directly or indirectly as a result of contractor operations, the Contractor's costs relating to extinguishing the fire shall not be reimbursed by the Government and shall be the sole responsibility of the Contractor. In addition the Contractor may be held liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents or employees.

(b) *Contractor's Responsibility for Controlling Other Emergencies.* When requested by the Contracting Officer, the Contractor shall allow the Forest Service to temporarily use employees and equipment for emergency work. Payment will be made at not less than the current area rates established by the Forest Service. Employees and equipment will be released from emergency operations when other labor and equipment adequate for the protection of the area are obtained.

NOTE: See Fire Plan Requirements referenced in Section J.

(End of clause)

[53 FR 6069, Feb. 29, 1988; 53 FR 12748, Apr. 18, 1988]

452.236-78 Forest Service Standard Specifications for Construction of Roads and Bridges.

As prescribed in 436.578, insert the following clause:

FOREST SERVICE STANDARD SPECIFICATIONS FOR CONSTRUCTION OF ROADS AND BRIDGES (FEB 1988)

These specifications are included by reference only. The requirements contained in these Standard Specifications are hereby made a part of this solicitation and any resultant contract.

(End of clause)

452.236-79 Opted Timber Sale Road Requirements.

As prescribed in 436.579, insert the following clause:

OPTED TIMBER SALE ROAD REQUIREMENTS (FEB 1988)

This contract is for the construction of timber sale road(s) which a timber purchaser has opted to have the Forest Service construct. The Forest Service is obligated to make these roads available to the timber sale purchaser by ——*——. Failure to make these roads available by this date could result in Government liability for delay to the timber purchaser for which the Contractor might become liable should he fail to complete this contract within the specified and allowed contract time.

(End of clause)

**Contracting Officer shall insert appropriate date.*

452.237-70 Loss, Damage, Destruction or Repair.

(a) As prescribed in 437.110(a), insert a clause substantially as follows:

Loss, Damage, Destruction and Repair (Feb 1988)

(a) For equipment furnished under this contract without operator, the Government will assume liability for any loss, damage or destruction of such equipment, not to exceed a total of $——*——, except that no reimbursement will be made for loss, damage or destruction due to (1) Ordinary wear or tear, (2) mechanical failure, or (3) the fault or negligence of the Contractor or the Contractor's agents or employees.

(b) For equipment furnished under this contract with operator, the Government shall not be liable for any loss, damage or destruction of such equipment, except for loss, damage or destruction resulting from the negligent or wrongful act(s) of Government employee(s) while acting within the scope of their employment.

(c) All repairs to equipment furnished under this contract shall be made by the Contractor and reimbursement, if any, shall be determined in accordance with (a) or (b) above. Repairs shall be made promptly and equipment returned to use within ——**—— hours. In lieu of repairing equipment, the Contractor may furnish similar replacement equipment within the time specified. The Contractor may authorize the Government to make repairs upon the request of the Contracting Officer. In such case, the Contractor will be billed for labor and parts costs.

(End of clause)

Contracting Officer shall insert amount available in current funds to cover potential liability.

***Contracting Officer shall insert appropriate number of hours.*

452.237-71 Pre-Bid/Pre-Proposal Conference.

As prescribed in 437.110(b), insert a provision substantially as follows:

Pre-Bid/Pre-Proposal Conference (Feb 1988)

(a) The Government is planning a pre-bid/pre-proposal conference, during which potential offerors may obtain a better understanding of the work required.

(b) Offerors are encouraged to submit all questions in writing at least five (5) days prior to the conference. Questions will be considered at any time prior to or during the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference, an amendment to the solicitation containing an abstract of the questions and answers, and a list of attendees, will be disseminated.

(c) In order to facilitate conference preparations, it is requested that the person named on the Standard Form 33 of this solicitation be contacted and advised of the number of persons who will attend.

(d) The Government assumes no responsibility for any expense incurred by an offeror prior to contract award.

(e) Offerors are cautioned that, notwithstanding any remarks or clarifications given at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by amendment to the solicitation. If the answers to conference questions, or any solicitation amendment, create ambiguities, it is the responsibility of the offeror to seek clarification prior to submitting an offer.

(f) The conference will be held.

Date: ——*——

Time: ——*——

Location: ——*——

(End of clause)

Contracting Officer shall insert appropriate information.

452.237-72 Pre-Bid/Pre-Proposal Conference and Site Visit.

As prescribed in 437.110(c), insert a provision substantially as follows:

Pre-Bid/Pre-Proposal Conference and Site Visit (Feb 1988)

(a) The Government is planning a pre-bid/pre-proposal conference and site visit during which potential offerors may obtain a better understanding of the work required.

(b) Offerors are strongly urged to visit this site during the conference to fully inform themselves about the location and conditions under which the work is to be performed.

(c) Offerors are encouraged to submit all questions in writing at least five (5) days prior to the conference. Questions will be considered at any time prior to, or during, the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference an amendment to the solicitation containing an abstract of the questions and answers, and a list of attendees, will be disseminated.

(d) In order to facilitate conference preparations, it is requested that the person named on the Standard Form 33 of this solicitation be contacted and advised of the number of persons who will attend.

(e) The Government assumes no responsibility for any expense incurred by an offeror prior to contract award.

(f) Offerors are cautioned that, notwithstanding any remarks or clarifications given at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by amendment to the solicitation. If the answers to conference questions, or any solicitation amendment, create ambiguities it is the responsibility of the offeror to seek clarification prior to submitting an offer.

(g) The conference will be held:

Date: —*—
Time: —*—
Location: —*—

(End of clause)

**Contracting Officer shall insert appropriate information.*

452.237-73 Equipment Inspection Visit.

As prescribed in 437.110(d), insert the following provision in solicitations:

EQUIPMENT INSPECTION VISIT (FEB 1988)

Offerors are urged and expected to inspect the equipment on which maintenance or repairs are to be performed and to satisfy themselves regarding all conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the equipment constitute grounds for a claim after contract award.

Offerors are invited to inspect the —*— at —*— by telephoning —*— on —*— for an appointment.

(End of clause)

**Contracting Officer shall insert appropriate information.*

452.237-74 Key Personnel.

As prescribed in 437.110(e), insert a clause substantially as follows:

KEY PERSONNEL (FEB 1988)

(a) The Contractor shall assign to this contract the following key personnel:

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) below. After the initial 90-day period, the Contractor shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes of key personnel.

(End of clause)

**Contracting Officer shall insert appropriate information.*

452.237-75 Restrictions Against Disclosure.

As prescribed in 437.110(f), insert a clause substantially as follows:

RESTRICTIONS AGAINST DISCLOSURE (FEB 1988)

(a) The Contractor agrees, in the performance of this contract, to keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a "need to know" basis. The Contractor agrees to immediately notify in writing, the Contracting Officer, named herein, in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor agrees not to disclose any information concerning the work under this contract to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(End of clause)

452.237-76 Progress Reporting.

As prescribed in 437.270(a), insert a clause substantially as follows:

PROGRESS REPORTING (FEB 1988)

The Contractor shall submit a progress report —*—, covering work accomplished during that period of the contract performance. The progress report shall be brief and factual and shall be prepared in accordance with the following format:

(a) A cover page containing:

(1) Contract number and title;

(2) Type of report, sequence number of report, and period of performance being reported;

(3) Contractor's name and address;

(4) Author(s); and

(5) Date of report.

(b) Section I—An introduction covering the purpose and scope of the contract effort. This shall be limited to one paragraph in all but the first and final month's narrative.

(c) Section II—A description of overall progress plus a separate description of each task or other logical segment of work on which effort was expended during the report period. The description shall include pertinent data and/or graphs in sufficient detail to explain any significant results achieved.

(d) Section III—A description of current technical or substantive performance, and any problem(s) which may impede performance along with proposed corrective action.

(e) Section IV—A planning schedule shall be included with the first progress report for all assigned tasks required under the contract, along with the estimated starting and completion dates for each task. The planning schedule shall be updated and submitted with each subsequent technical progress report, including an explanation of any difference between actual progress and planned progress, why the differences have occurred, and—if behind planned progress—what corrective steps are planned.

(f) Section V—If applicable, financial information shall be submitted for each major task or line item cost. Data shall include:

(1) The total estimated cost budgeted (fee excluded)

(2) The estimated cost expended during the current reporting period

(3) Identification of direct labor hours of prime contractor and subcontractor(s) and/or consultant(s), if applicable

(4) Total project to-date expenditures

(5) Total remaining funds.

(End of clause)

Contracting Officer shall insert frequency of reporting requirement.

425.237-77 Identification of Contract Deliverables.

As prescribed in 437.270(b), insert the following clause:

Identification of Contract Deliverable (Feb 1988)

Unless otherwise specified by the Contracting Officer in writing, all documents prepared and submitted by the Contractor to the Government under this contract shall include the following information on the cover page of each document:

(a) Name and business address of the contractor

(b) Contract number

(c) Total dollar amount of contract including any modifications thereto

(d) Whether the contract was subject to full and open competition

(e) Name, position, and office location of the USDA Contracting Officer's Representative

(f) Date of report.

(End of clause)

425.237-78 Contracts with Consulting Firms for Services.

As prescribed in 437.270(c), insert a clause substantially as follows:

Contracts With Consulting Firms for Services (Feb 1988)

Offerors are specifically cautioned that any firm(s) receiving a contract award to provide the services described herein will be prohibited from competing for or receiving a contract to perform ——*——.

(End of clause)

**Contracting Officer shall insert the appropriate information.*

425.242-70 Estimated and Allowable Costs.

As prescribed in 442.704, insert a clause substantially as follows:

Estimated and Allowable Costs (Feb 1988)

(a) Estimated Costs. The estimated cost of this contract is $——*——, which consists of $——*—— for reimbursable costs and $——*—— for fixed fee. These costs shall be subject to the provisions of FAR clauses: 52.232-20, Limitation of Cost; 52.216-7, Allowable Cost and Payments; and clause 52.216-8, Fixed Fee.

(b) Allowable Costs. (1) Final annual indirect cost rate(s) and the appropriate base(s) shall be established in accordance with FAR Subpart 42.7 in effect for the period covered by the indirect cost rate proposal.

(2) Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the appropriate Government Representative in accordance with FAR 42.704, subject to adjustment when the final rates are established. The established billing rates are currently as follows: ——**——

(End of clause)

**Contracting Officer shall insert appropriate dollar amounts.*

***Contracting Officer shall insert billing rate data.*

Alternate I (Feb 1988). As prescribed in 442.704, substitute a paragraph (a) substantially as follows in cost-no-fee contracts:

(a) Estimated Costs. The estimated cost of this contract is $——*——. This cost shall be subject to the provisions of FAR clauses 52.232-20, Limitation of Cost and 52.216-7, Allowable Cost and Payments.

**Contracting Officer shall insert appropriate dollar amount.*

Alternate II (Feb 1988). As prescribed in 442.704, substitute a paragraph (a) substantially as follows in cost-plus-incentive-fee contracts:

(a) Estimated Costs. The estimated cost of this contract is $——*——, which consists of $——*—— for reimbursable costs, $——*—— for base fee, and $——*—— for incentive fee. These costs shall be subject to the provisions of FAR clauses 52.232-20, Limitation of Cost; 52.216-7, Allowable Cost and Payments; and 52.216-10, Incentive Fee.

**Contracting Officer shall insert appropriate contract amounts.*

Alternate III (Feb 1988). As prescribed in 442.704, substitute a paragraph (a) substantially as follows in cost-plus-award-fee contracts:

(a) Estimated Costs. The estimated cost of this contract is $——*——, which consists of $——*—— for reimbursable costs, $——*—— for base fee, and $——*—— for award fee. These costs shall be subject to the provisions of FAR clauses 52.232-20, Limitation of Cost; 52.216-7, Allowable Cost and Payments; and 52.216-10, Incentive Fee.

**Contracting Officer shall insert appropriate contract amounts.*

452.245-70 Government-Furnished Property.

As prescribed in 445.106, insert the following clause:

GOVERNMENT-FURNISHED PROPERTY (FEB 1988)

The Government will provide the following item(s) of Government property to the contractor for use in the performance of this contract. This property shall be used and maintained by the Contractor in accordance with the provisions of the "Government Property" FAR clause contained elsewhere in the contract.

Item No. ——*——
Description ——*——
Quantity ——*——
Delivery Date ——*——

(End of clause)

**Contracting Officer shall insert appropriate data.*

452.245-71 Government Property—Facilities Use.

As prescribed in 445.302-7, insert a clause substantially as follows:

GOVERNMENT PROPERTY—FACILITIES USE (FEB 1988)

In the performance of this contract, the Contractor is authorized to use on a no-charge, noninterference basis, the following Government-owned facilities. The facilities shall be used and maintained in accordance with the provisions of the "Government Property (Facilities Use)" FAR clause contained elsewhere in the contract.

(End of clause)

452.246-70 Inspection and Acceptance.

As prescribed in 446.370, insert a clause substantially as follows:

INSPECTION AND ACCEPTANCE (FEB 1988)

(a) The Contracting Officer or the Contracting Officer's duly authorized representative will inspect and accept the supplies and/or services to be provided under this contract.

(b) Inspection and acceptance will be performed at: ——*——

(End of clause)

**Contracting Officer shall insert appropriate identifying data.*

Alternate I (Feb 1988). As prescribed in 446.370, substitute a paragraph (b) and add a paragraph (c):

(b) Inspection will be performed at:
——*——

(c) Acceptance will be performed at:
——*——

(End of clause)

**Contracting Officer shall insert appropriate identifying data.*

552.247-70 Delivery Location.

As prescribed in 447.302, insert a clause substantially as follows:

DELIVERY LOCATION (FEB 1988)

Shipment of deliverable items, other than reports, shall be to: ——*——

(End of clause)

**Contracting Officer shall insert appropriate identifying data.*

452.247-71 Marking Deliverables.

As prescribed in 447.305-10, insert a clause substantially as follows:

MARKING DELIVERABLES (FEB 1988)

(a) The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract.

(b) Mark deliverables, except reports, for ___*___

(End of clause)

**Contracting Officer shall insert the appropriate information.*

452.247-72 Packing for Domestic Shipment.

As prescribed in 447.305-10(b), insert the following clause:

PACKING FOR DOMESTIC SHIPMENT (FEB 1988)

Material shall be packed for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination. Containers and closures shall comply with the Interstate Commerce Commission regulations, Uniform Freight Classification Rules, or regulations of other carriers as applicable to the mode of transportation.

(End of clause)

452.247-73 Packing for Overseas Shipment.

As prescribed in 447.305-10(c), insert the following clause:

PACKING FOR OVERSEAS SHIPMENT (FEB 1988)

Supplies shall be packed for overseas shipment in accordance with the best commercial export practice suitable for water movement to arrive undamaged at ultimate destination.

(End of clause)

452.252-70 List of Attachments.

To meet the requirement of FAR 14.201-4, insert a listing in all solicitations and contracts where there will be attachments listed in Section J.

LIST OF ATTACHMENTS (FEB 1988)

The Contracting Officer shall insert appropriately identified list of documents, exhibits and other attachments by title, date, and number of pages.

PART 453—FORMS

Sec.
453.000 Scope of part.

Subpart 453.1—General

453.103 Exceptions.
453.108 Recommendations concerning forms.

Subpart 453.2—Prescription of Forms

453.200 Scope of subpart.
453.204 Administrative matters.
453.204-2 Contract reporting (AD-760).
453.213 Small purchase and other simplified purchase procedures (AD-744 and AD-838).
453.270 Request for contract action (AD-700).

Subpart 453.3—Illustrations of Forms

453.300 Scope of subpart.
453.303 Agency forms.
453.303-700 Procurement Request (AD-700).
453.303-744 Purchase Order-Invoice-Voucher (AD-744).
453.303-760 Report of Individual Procurement (AD-760).
453.303-838 Purchase Order (AD-838).

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12132, Mar. 28, 1984 (interim rule), and 50 FR 14197, Apr. 10, 1985 (final rule), unless otherwise noted.

453.000 Scope of part.

This part: (a) Prescribes Department of Agriculture (AD) forms for use in acquisition, (b) contains requirements and information generally applicable to AD forms and forms prescribed by FAR Part 53, and (c) illustrates AD forms.

Subpart 453.1—General

453.103 Exceptions.

(a) The contracting officer shall submit requests for exceptions to forms prescribed in FAR Part 53 through the HCA to the Director, Office of Operations, for referral to the GSA.

(b) Requests for exceptions to AD forms prescribed in Part 453 shall be handled as individual or class deviations, as appropriate (see Subpart 401.4).

453.108 Recommendations concerning forms.

Contract officers shall submit recommendations for new forms or to revise, eliminate, or consolidate forms prescribed by FAR 53 and Part 453 through the HCA to the Director, Office of Operations, for consideration or referral to the Civilian Agency Acquisition Council (CAAC), as appropriate.

Subpart 453.2—Prescription of Forms

453.200 Scope of subpart.

This subpart prescribes Department of Agriculture (AD) forms for use in acquisition. Consistent with the approach used in FAR Subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the AGAR in which the form usage requirements are addressed.

453.204 Administrative matters.

453.204-2 Contract reporting (AD-760).

Form AD-760, *Report of Individual Procurement,* is prescribed by the USDA Procurement Reporting System, for reporting contract actions over $10,000 (see 404.601(b)).

453.213 Small purchase and other simplified purchase procedures (AD-744 and AD-838).

(a) Form AD-744, *Purchase Order-Invoice-Voucher,* is prescribed for use as an over-the-counter purchase document (see 413.505-3(a)).

(b) Form AD-838, *Purchase Order,* is prescribed for use as a small purchase/delivery order document (see 413.505-2).

453.270 Request for contract action (AD-700).

Form AD-700, *Procurement Request,* is prescribed as the contract requisition document for contracting activities in USDA.

Subpart 453.3—Illustrations of Forms

453.300 Scope of subpart.

This subpart contains illustrations of Department of Agriculture (AD) forms for use in acquisitions. Forms are not illustrated in the FEDERAL REGISTER, or Code of Federal Regulations. Individual copies may be obtained from any USDA contracting activity, or the Director, Office of Operations, Washington, D.C. 20250.

453.303 Agency forms.

453.303-700 Procurement Request (AD-700).

453.303-744 Purchase Order-Invoice-Voucher (AD-744).

453.303-760 Report of Individual Procurement (AD-760).

453.303-838 Purchase Order (AD-838).

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(Parts 500 to 599)

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SUBCHAPTER A—GENERAL

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

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501.770 Determinations and findings required.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10792, Mar. 22, 1984, unless otherwise noted.

501.000 Scope of part.

This part sets forth introductory information concerning the General services Administration Acquisition Regulation (GSAR), describes the methods by which the General Services Administration implements and supplements the Federal Acquisition regulation (FAR), and contains policies and procedures that implement and supplement Part 1 of the FAR.

Subpart 501.1—Purpose, Authority, Issuance

501.101 Purpose.

This subpart establishes Chapter 5 of the Federal Acquisition Regulations System, and describes the relationship of Chapter 5 to the FAR.

501.102 Authority.

The General Services Administration Acquisition Regulation (GSAR 5) is prescribed by the Associate Administrator for Acquisition Policy in Chapter 5, Title 48, Code of Federal Regulations, under the authority of the Federal Property and Administrative Services Act of 1949, as amended.

[53 FR 130, Jan. 5, 1988]

501.103 Applicability.

(a) The GSAR applies to all GSA contracts for property or services (including construction) for the use of the Federal Government through purchase or lease.

(b) Part 570 of the GSAR contains policies and procedures on the acquisition of leasehold interests in real property. Parts 501, 502, 503, 505, 506, 517, 533, 552, 553, and Subparts 504.70, 507.1, 509.4, 515.1, 519.6, 519.7, 532.8 and 543.1 include policies and procedures which generally apply to all contracts including leases of read property. Other GSAR provisions do not apply to leases of real property unless a specific cross reference is made to the provision in Part 570.

(c) The GSAR applies to the disposal of real and personal property only to the extent explicitly stated in specific GSAR provisions. The portions of Subpart 501.6 regarding the Contracting Officer Warranty Program and legal review and assistance, and Subpart 504.70 on the uniform procurement instrument identification system apply to the disposal of real or personal property. Subpart 509.4 regarding suspension and debarment of contractors is applicable to contracts for the disposal of personal property (see FPMR 101-45.6).

(d) Regulations in the GSAR may deviate from the FAR when a deviation has been explicitly authorized. (See FAR Subpart 1.4 and GSAR Subpart 501.4.) When the GSAR does not contain a regulation that implements the FAR, the FAR alone will govern.

[50 FR 10036, Mar. 13, 1985, and 50 FR 14244, Apr. 11, 1985, as amended at 53 FR 130, Jan. 5, 1988]

501.104 Issuance.

501.104-1 Publication and code arrangement.

(a) The GSAR is published in: (1) The daily issue of the FEDERAL REGISTER, (2) cumulated form in the Code of Federal Regulations (CFR), and (3) a separate looseleaf edition on buff colored paper stock.

(b) The GSAR is issued as Chapter 5 of Title 48, Code of Federal Regulations.

(c) Each numbered unit or segment (e.g., part, subpart, section, etc.) begins with the CFR chapter number.

501.104-2 Arrangement of regulations.

(a) *General.* The GSAR is divided into subchapters, parts, subparts, sections, subsections, and further subdivisions as necessary.

(b) *Numbering.* (1) The numbering system used in GSAR conforms to the FAR System. (See FAR 1.104-2.) A particular policy or procedure is identified by the same number in both the FAR and GSAR except that the chapter number assigned to the FAR (Chapter 1) in not included in the FAR.

(2) When the GSAR 5 implements a subchapter, part, subpart, section, or subsection of the FAR, the implementing subchapter, part, subpart, section, or subsection of GSAR is numbered (and captioned) to correspond to the FAR subchapter, part, subpart, section, or subsection.

(3) When the GSAR 5 supplements the FAR and thus deals with subject matter not contained in the FAR, numbers beginning with 70 are assigned to the supplementing part, subpart, section, or subsection.

(4) When the subject matter contained in the FAR subchapter, part, subpart, section, or subsection requires no implementation, the GSAR will not contain a corresponding subchapter, part, section, or subsection. This will

result in some gaps in the GSAR series of subchapter, part, subpart, section or subsection numbers. In such cases, reference must be made to the FAR for applicable policies and procedures.

(c) *References and citations.* (1) In the GSAR, cross-reference to the FAR are made in the same manner as in the FAR. (See FAR 1.104-2(c) for information on FAR numbering.)

(2) This regulation may be referred to as the General Services Administration Acquisition Regulation or the GSAR.

(3) Using the GSAR coverage at 509.106-4(d) as an example reference to the—

(i) Part would be "GSAR Part 509" outside the GSAR and "Part 509" within the GSAR.

(ii) Subpart would be "GSAR subpart 509.1" outside the GSAR and "Subpart 509.1" within the GSAR.

(iii) Section would be "GSAR 509.106" outside the GSAR and "509.106" within the GSAR.

(iv) Subsection would be "GSAR 509.106-4" outside the GSAR and "509.106-4" within the GSAR.

(v) Paragraph would be "GSAR 509.106-4(d)" outside the GSAR and "509.106-4(d)" within the GSAR.

(vi) Reference to two or more sections, subsections, and/or paragraphs would be "GSAR 509.106, 509.106-4, and 509.106-4(d)" outside the GSAR and "509.106, 509.106-4, and 509.106-4(d)" within the GSAR.

(4) In formal documents, such as legal briefs, citations of GSAR material shall include an appropriate reference to Title 48 of the Code of Federal Regulations; e.g., "48 CFR ——."

[49 FR 10792, Mar. 22, 1984, as amended at 50 FR 2284, Jan. 16, 1985]

501.104-3 Copies.

Copies of the GSAR in the Code of Federal Regulations form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

501.105 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by OMB. The following OMB control numbers apply:

GSAR segment	OMB control Nos.
507.305	3090-0104
509.105-1(a)	3090-0007
509.105-70(a)	3090-0214
510.004-72	3090-0203
512.104(a)	3090-0204
512.104(c)	3090-0204
512.104(e)	3090-0204
514.201-6(d)	3090-0200
515.406-2	3090-0199
522.403(a)	1215-0140 1215-0141 1215-0017 1215-0149
522.405-3(a)	1215-0140
522.405-6(f)	1215-0149
523.370	3090-0205
525.105-70(b)	3090-0198
528.202-71(a)	3090-0189
532.111(e)	1510-0050
532.502-3	
532.7005	3090-0071
537.110(a)	3090-0197
537.110(b)	3090-0006
542.1107(a)	3090-0027
552.207-70	3090-0104
552.209-71	3090-0214
553.210-74	3090-0203
552.212-1(b)	3090-0204
552.212-71	3090-0204
552.212-73	3090-0204
552.214-75	3090-0200
552.215-75	3090-0199
552.222-70	1215-0140 1215-0141
552.222-73	1215-0140 1215-0017 1215-0149
552.223-71	3090-0205
552.225-70	3090-0198
552.228-74	3090-0189
552.232-73	1510-0050
552.232-74	
552.232-76	3090-0071
552.237-70	3090-0197
552.237-71	3090-0006
552.242-70	3090-0027
SF-2	3090-0072
SF-2-B	3090-0072
GSA-72	3090-0004
GSA-72-A	3090-0121
GSA-434	3090-0167
GSA-527	3090-0007
GSA-618-D	1215-0149
GSA-1056	3090-0204
GSA-1142	3090-0080
GSA-1364	3090-0086
GSA-1678	3090-0027
GSA-2428	1215-0140
GSA-3017	1215-0017

[50 FR 2285, Jan. 16, 1985, as amended at 53 FR 130, Jan. 5, 1988]

501.170 The General Services Administration Acquisition Regulation (GSAR).

501.170-1 General.

The General Services Administration Acquisition Regulation (GSAR) implements and supplements the FAR. The GSAR also prescribes policies, procedures, contract clauses, and solicitation provisions that govern the acquisition process or otherwise control the relationship between the agency, including its suborganizations, and contractors or prospective contractors. Nonregulatory internal agency guidance, as described in the the FAR, may be issued in accordance with 501.171.

501.170-2 Exclusions.

Certain GSA procurement policies and procedures which would otherwise fall within the scope of this GSAR may be excluded when justified. These exclusions may include the following categories:

(a) Subject matter that bears a security classification.

(b) Policies or procedures that are expected to be effective for a period of less than 6 months.

(c) Policies or procedures that are expected to be effective on an experimental basis for a reasonable period.

(d) Policies and procedures pertaining to other functions of GSA as well as to procurements functions, and for which there is need to make the directive available simultaneously to all GSA employees concerned.

501.170-3 Amendments.

The GSAR may be amended from time to time by the Associate Administrator for Acquisition Policy, with appropriate concurrences from other GSA officials (e.g., counsel and any other appropriate offices).

[53 FR 131, Jan. 5, 1988]

501.170-4 Acquisition circulars.

(a) Acquisition Circulars (AC) may be issued by the Associate Administrator for Acquisition Policy as often as may be necessary to provide coverage on an interim basis, pending subsequent incorporation of material in this regulation by amendment. The use of Acquisition Circulars to supplement the GSAR is appropriate when speed of issuance is essential, numerous changes are required and all necessary changes cannot be made promptly. Acquisition Circulars will be considered canceled after one year and therefore must be incorporated in the GSAR within this time period.

(b) Acquisition Circulars will be identified by the prefix "AC" followed by the last two digits of the calendar year in which issued and will be numbered consecutively. For example, the first circular issued in calendar year 1984 will be identified as AC-84-1.

[49 FR 10792, Mar. 22, 1984, as amended at 53 FR 131, Jan. 5, 1988; 53 FR 1540, Jan. 20, 1988]

501.171 Other GSA publications.

501.171-1 GSA orders and handbooks.

Internal agency guidance, as described in the FAR, should be issued in the form of a GSA order or handbook. "Internal agency guidance" is defined as designations and delegations of authority, assignments of delegations of authority, assignments of responsibility, work-flow procedures, internal reporting requirements, detailed operating procedures, etc. GSA orders and handbooks must not unnecessarily repeat, paraphrase, or otherwise restate the FAR and GSAR. GSA orders and handbooks dealing with acquisition may be issued by the heads of contracing activities or their designees. Policies and procedures for drafting, formatting, and numbering GSA Orders and handbooks are contained in the handbook, Writing GSA Internal Directives (OAD P 1832.3).

[53 FR 131, Jan. 5, 1988]

501.171-2 Acquisition letters (AL).

(a) Acquisition Letters may be issued as often as may be necessary to provide coverage on an interim basis, pending subsequent incorporation of material in GSA orders or handbooks. The use of Acquisition Letters to amend GSA Orders or handbooks is appropriate when speed of issuance is essential, numerous changes are required, and all necessary changes cannot be made promptly. Acquisition Letters will be considered canceled after one year and therefore must be incorporated into the applicable order or handbook within that time period.

(b) The Associate Administrator for Acquisition Policy, and heads of contracting activities or their designees may issue Acquisition Letters. No more than two officials within a contracting activity, as appropriate, may be designated to issue Acquisition Letters.

(c) The Associate Administrator for Acquisition Policy or a designee must coordinate ALs with the heads of central office contracting activities, counsel, and the Inspector General. The heads of central office contracting activities or their designees must coordinate ALs with the Office of Acquisition Policy, counsel and the Inspector General. Regional offices must coordinate ALs with the regional counsel, and the regional Acquisition Management Staff (RAMS). When time permits, regional offices should also coordinate ALs with their Central Office counterpart and the Office of Acquisition Policy.

(d) ALs must be identified by a number that is to be assigned by the issuing activity. The number must begin with the correspondence symbol of the issuing office, must be followed by the last two digits of the calendar year in which it is issued and must be numbered consecutively beginning with 1. For example, the number of the first letter issued by the Commissioner, Public Buildings Service, in calendar year 1984 will be P-84-1. If the Commissioner, PBS, authorized the Assistant Commissioner for the Office of Procurement (PP) and the Assistant Commissioner for the Office of Real Property Development (PQ) to issue ALs on his behalf, the ALs would be numbered PP-84-1 and PQ-84-1 respectively. If the Commissioner authorizes the Assistant Commissioners to issue ALs on his behalf, but elects to sign a particular letter, the AL letter should be numbered using the correspondence symbol of the office that prepared the AL. Regional numbers will be preceded by the region number.

(e) ALs must conform to the format for instructional letters outlined in Appendix D of the Writing GSA Internal Directives Handbook (OAD P 1832.3). In addition, each AL must be numbered, dated, and include a subject line that cites the order or handbook reference. The body of the AL should contain the following paragraphs, as appropriate:

(1) Purpose.

(2) Background.

(3) Effective date.

(4) Termination date.

(5) Cancellation.

(6) Applicability (offices to which AL is applicable).

(7) Reference to regulations (FAR or GSAR), handbooks or orders.

(8) Instructions/procedures.

(f) ALs issued by the heads of Central Office contracting activities must be signed by the head of the contracting activity or a designee.

(g) ALs may be printed on colored paper in accordance with the following color designations:

Blue—Office of Acquisition Policy
Salmon—Federal Supply Service
Yellow—Information Resources Management Service
Pink—Federal Property Resources Service
Green—Public Buildings Service
White—Regional Offices and other Central Office contracting activities not listed above.

(h) The issuing office is responsible for distributing its ALs in accordance with the guidelines outlined below:

Issuing office	Distribution
Office of Acquisition Policy.	All GSA contracting activities, regional Acquisition Management Staff (RAMS), Associate General Counsels and regional counsels, the Directives and Reports Management Branch (CAID).
Central Office Heads of Services and Staff Offices.	Office of Acquisition Policy, Service/office contracting activities or segment thereof, RAMS, Associate General Counsels and regional counsels, and the Directives and Reports Management Branch.

Issuing office	Distribution
Regional Offices	Office of Acquisition Policy, appropriate Central Office contracting activities, RAM'S, regional counsel, regional contracting activities or segment thereof and the Directives and Reports Management Branch.

(i) Each issuing office must submit a report of ALs issued and canceled to the Office of GSA Acquisition Policy and Regulations (VP) on a quarterly basis. The Office of Acquisition Policy will issue a consolidated index of all AL's issued or canceled on a quarterly basis. This index will be distributed to all GSA contracting activities.

[53 FR 131, Jan. 5, 1988]

Subpart 501.4—Deviations From the FAR and GSAR

501.401 Definition.

The term "deviation" as used in the GSAR has the same meaning as in the FAR 1.401.

501.402 Policy.

(a) In order to maintain maximum uniformity, deviations from the GSAR and the FAR must be kept to a minimum.

(b) A contracting activity must not deviate from a regulatory provision that implements a statutory requirement in a manner that would violate the underlying statute.

[53 FR 131, Jan. 5, 1988]

501.403 Individual deviations.

(a) Deviations by GSA activities from the GSAR or the FAR in individual cases must be approved by the head of the contracting activity. The file must disclose the nature of the deviation and the reasons for the action. A copy of the deviation approval must be furnished to the Office of Acquisition Policy (V).

(b) The deviation procedure must not be used to defeat the approval requirements contained in the FAR and GSAR.

[53 FR 132, Jan. 5, 1988]

501.404 Class deviations.

(a) Deviations by GSA activities from the FAR in classes of cases must be approved by the Associate Administrator for Acquisition Policy (V).

(b) Deviations by GSA activities from the GSAR in classes of cases must be approved by the Associate Administrator for Acquisition Policy (V). These deviations will expire in 12 months if not extended. They may be rescinded earlier without prejudice to any action previously taken.

(c) Class deviation requests must be supported by statements that fully disclose the need for and the nature of the deviation.

[53 FR 132, Jan. 5, 1988]

Subpart 501.6—Contracting Authority and Responsibilities

501.600-70 Scope of subpart.

This subpart sets forth policy and procedures for the GSA-wide contracting officer warrant program (COWP) and delineates the responsibilities of contracting officers and the heads of contracting activities (HCA).

501.601 General.

(a) The Assistant Administrator for Acquisition Policy is the Procurement Executive for GSA and is responsible for:

(1) Managment direction of the procurement system of the agency, including implementation of the unique procurement policies, regulations and standards of the agency;

(2) Developing and maintaining a procurement career management program to ensure an adequate professional workforce; and

(3) Delegating contracting officer authority in accordance with the Contracting Officer Warrant Program.

(b) Heads of contracting activities (HCA) (see GSAR 502.1) have unlimited contracting authority which may not be redelegated and are responsible for:

(1) Implementing and maintaining an effective and efficient program for the procurement of personal property and non-personal services (including

construction and leasing) assigned to the activity;

(2) Establishing adequate controls to ensure compliance with applicable laws, regulations, procedures, and good management practices;

(3) Recommending highly qualified, well trained candidates to the Assistant Administrator for Acquisition Policy for designation as contracting officers with the limitations prescribed by the warrant boards and based on a vaild organizational need;

(4) Monitoring the performance of warranted contracting officers with regard to actions that may require suspension or termination of the appointment and recommending to the Assistant Administrator for Acquisition Policy the suspension or termination of appointment of contracting officers; and

(5) Establishing and approving acquisition/contracting training plans to satisfy COWP training requirements and ensuring the availability of required training funds for implementation of these plans.

[49 FR 10792, Mar. 22, 1984, as amended at 50 FR 36081, Sept. 5, 1985]

501.601-70 Responsibility for administration of Contracting Officer Warrant Program (COWP).

(a) *Regional offices.* (1) *Regional Administrator.* The regional Administrator or his/her deputy, as the recommending official, shall recommend to the designating official the appointment or termination of appointment of contracting officers.

(2) *Contracting Officer Warrant Board.* The Contracting Officer Warrant Board shall receive, evaluate and process to the Office of Project Control and Oversight (OPCO) requests for appointment of contracting officers. (See 501.603-72.)

(3) *Office of Project Control and Oversight.* The regional administration of the contracting Officer Warrant Program has been assigned to the Office of Project Control and Oversight (OPCO). OPCO shall:

(i) Administer the Contracting Officer Warrant Program (COWP);

(ii) Ensure that the warrant board evaluates and recommends acceptance or rejection of applicants according to the requirements of the COWP;

(iii) Recommend appropriate additional training and the level of warrant certifications as required by the warrant board;

(iv) Issue procedures with approval of the Office of Acquisition Policy for the operation of the program at the regional level;

(v) Recommend program changes to the Office of Acquisition Policy;

(vi) Analyze proposed regional courses and training materials for procurement personnel and recommend them to the Office of Acquisition Policy, as appropriate, for fulfilling the requirements of COWP; and

(vii) Maintain detailed training records for each contracting officer.

(viii) Ensure that a GSA Form 19, Designation of Authorized Representative, is submitted to the Regional Finance Division when each contracting officer warrant is issued and that the Regional Finance Division is notified promptly when a contracting officers authority changes, is suspended or terminated.

(b) *Central Office.* The head of a contracting activity, as recommending official, shall recommend to the designating official the appointment or termination of appointment of contracting officers. The head of a contracting activity, shall also act as the warrant board.

501.602 Contracting officers.

501.602-1 Authority.

Contracting officers designated by name on Standard Form 1402, Certificates of Appointment, are authorized to exercise contracting officer authority, subject to all requirements and limitations set forth in the certificate of appointment (501.603-3(b)) and existing delegations of authority. Contracting officers shall exercise reasonable care, skill and judgement in all actions.

[51 FR 45892, Dec. 23, 1986]

501.602-2 Responsibilities.

(a) *GSA revolving funds.* Unless otherwise notified, contracting officers may assume that sufficient funds are available for purchases payable from GSA revolving funds upon the receipt of a requisition signed by an authorized individual citing funds. Requisitions for requirement contracts which provide for a guaranteed minimum must cite funds in an amount adequate to cover the guaranteed minimum quantities.

(b) *GSA funds, other than revolving funds.* (1) The receipt of a requisition signed by an authorized individual shall be considered as evidence that the amount of funds cited is available for purchases payable from GSA funds other than revolving funds. Clearance as to the availability of additional funds shall be obtained from the requisitioning activity prior to issuance of a contract or purchase order when the purchase exceeds (by 10 percent or $50, whichever is greater) the amount cited on the purchase requisition.

(2) In cases where a requisition is not used, e.g., leases of real property, the contracting officer shall take the necessary action to ensure funds are available before executing their contract.

(c) *Other Federal agencies' funds.* On purchases for direct delivery to Federal agencies other than GSA, the receipt of a properly signed/approved purchase request shall be considered as sufficient evidence that funds are available. Where, however, the agency's purchase request indicates that a specific dollar amount has been set aside for the acquisition, as in the case of a Project Implementation Order/Commodities (PIO/C) from the Agency for International Development, the buying activity shall not exceed the fund limitation except to the extent authorized in supply support agreements. When the funds stated on the purchase request appear to be or are insufficient to cover all applicable costs for the acquisition, transportation, export surcharge, and any other expense involved in the delivery of material to designated consignees, additional funds shall be requested and received from the requiring agency before the acquisition is completed by the activity indicated below:

(1) When requirements are submitted by agencies directly to a contracting division in the Central Office (whether the procurement is actually made by the appropriate contracting division in the Central office or subsequently transmitted, in whole or in part, to one or more regions for acquisition) the request for additional funds shall be made by the appropriate Central Office contracting division.

(2) When requirements are submitted to a regional contracting division (whether acquisition is made by that region, forwarded in whole or in part to another regional contracting division or to a contracting division in the Central Office) the request for additional funds shall be made by the order processing and control activity in the region initially receiving the requirement.

501.602-3 Ratification of unauthorized commitments.

(a) *Authority.* Subject to the limitations and in accordance with the procedures prescribed in FAR 1.602-3, contracting officers may ratify contractual commitments made by employees who do not have the requisite authority to enter into contracts on the Government's behalf if the head of the contracting activity (HCA) has approved the ratification action. The authority to approve ratification actions may not be redelegated.

(b) *Procedures.* (1) Generally, the Government is not bound by agreements or contractual commitments made by persons to whom contracting authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the GSAR, and good acquisition practice. Therefore, such unauthorized contractual commitments should be considered as serious employee misconduct and consideration given to initiating disciplinary action. In any instances where suspected irregularities may involve fraud against the Government, or any type of misconduct which might be punishable as a criminal offense, either the employee's supervisor or the contracting officer should immediately report the matter to the Office of the Inspector General with a request for a complete investigation.

(2) The individual who made the unauthorized commitment shall furnish the appropriate contracting director all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to, a statement as to why normal acquisition procedures were not followed, why the contractor was selected and a list of other sources considered, description of work or products, estimated or agreed contract price, citation of appropriation available, and a statement regarding the status of the performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the contracting director may waive the requirement that the responsible employee initiate and document the request for ratification, provided that a written determination is made stating that a commitment was in fact made by an employee who shall be identified in the determination.

(3) The appropriate contracting director will assign the request for ratification action to an individual contracting officer for processing. The contracting officer assigned the action will be responsible for preparing a summary statement of facts addressing the limitations in FAR 1.602-3(c) and making a recommendation as to whether the transaction should be ratified and stating the reasons therefore. Advice against ratification should include a recommendation for other appropriate disposition. When ratification is not permissible due to legal improprieties in the procurement, the contracting officer may recommend that payment be made for services rendered on a quantum merit basis (the reasonable value of work or labor) or for goods furnished on a quantum valebant basis (the reasonable value of goods sold and delivered) provided there is a showing that the Government has received a benefit. (See also FAR 1.602-3(d)).

(4) The request for ratification, the information required by paragraph (b)(3) above, and a recommendation for corrective action to preclude recurrence, must be forwarded, through appropriate channels, to the HCA for consideration.

(5) The HCA, upon receipt and review of the complete file, may approve the ratification if determined to be in the Government's best interest, or direct other disposition as appropriate. Acquisitions which have been approved for ratification shall be forwarded to the appropriate contracting officer for issuance of the necessary contractural documents. If the request for ratification is not justified, the HCA shall return the request without approval and provide an explanation for the decision not to approve ratification.

(6) Each HCA shall maintain a separate file containing a copy of each request for approval to ratify an unauthorized commitment. This file shall be made available for review by the Office of Acquisition Policy and the Inspector General.

[53 FR 7366, Mar. 8, 1988]

EFFECTIVE DATE NOTE: Section 501.602-3, temporarily added at 53 FR 7366, Mar. 8, 1988, expires March 7, 1989.

501.603 Selection, appointment, and termination of appointment.

(a) *General.* This section establishes the uniform policy and procedures for warranting contracting officers (CO). The objective of the COWP is to appoint as contracting officers only those officials who are fully qualified to obligate the Government to the expenditure of public funds for the acquisition of property or services, based on a valid organizational need and appropriate workload. In order to provide for signatures on obligating documents to be checked by the appropriate Finance Division, a GSA Form 19, Designation of Authorized Representative, must be submitted to the appropriate Finance Division upon receipt of a Standard Form 1402, Certificate of Appointment. In the event of a change, suspension, or termination of a contracting officer's appointment, the appropriate Finance Division must be promptly notified. No obligation or authorization for the expenditure of funds will be accepted by the Finance Division unless a GSA Form 19 is on file.

(b) *Applicability.* (1) The GSA Contracting Officer Warrant Program applies to all services, staff offices, and regions, except for those contracting officers appointed pursuant to the Inspector General Act (Pub. L. 95-452).

(2) A warrant is not required for:

(i) Individual purchases under $150, regardless of the method of procurement;

(ii) Any imprest fund transactions less than $150 (purchases of $150 or more must be approved in advance by a contracting officer unless the transaction is otherwise exempt from the warrant program by this GSAR 501.603(b)(2));

(iii) The signing of training authorizations for public course offerings;

(iv) The signing of travel related documents;

(v) The authorizations or orders for printing and duplicating services;

(vi) The ordering of supplies from GSA store stock via a Standard Form 344, FEDSTRIP;

(vii) The signing of Government Bills of Lading;

(viii) The processing/procuring of a telephone service authorization or a communication service authorization issued to regulated/public utility common carriers. Emergency communications coordinators shall be authorized in their warrants to procure emergency communications equipment and services during Presidentially declared emergency or disasters;

(ix) The ordering by inventory managers of stock replenishment under established source contracts that are machine loaded. Current GSA Form 19 signature cards must be on file in the appropriate Finance Division;

(x) Delivery orders (machine generated) for motor vehicle procurements that are written against definite quantity contracts need not be signed as the contract is the obligating document in this case;

(xi) Entering into a Memorandum of Agreement with another Federal agency and to authorize the transfer of funds to that agency for services rendered; and

(xii) The authorization of interagency transfers of funds via a GSA 2957, Work Authorization.

(c) *Definitions.* The following definitions apply to the material in this section:

(1) "Recommending official" means the head of the contracting activity who has been authorized to recommend candidates for designation as contracting officers to the designating official subject to the requirements and recommendations of the warrant boards and this 501.603. A Regional Administrator may redelegate this authority to his/her deputy.

(2) "Designating official" means the Administrator or Associate Administrator for Acquisition Policy, who is authorized to appoint contracting officers in GSA.

(3) "GSA Contracting Officer Representative" (COR) means a Government employee, designated in writing by the CO, by name and position title, who is authorized to take action for the CO with specified limitations. A CO may not authorize a COR to issue change orders or otherwise modify a contract unless the COR is a warranted CO.

(4) "Delivery order" means placing an order for supplies and/or services against an already established contract under the terms and conditions of the established contract.

(5) "Warrant Limitations" means limitations which, in addition to the FAR, GSAR, laws, Executive Orders, GSA Orders, and other applicable regulations, are imposed on the authority of contracting officers either by delegation or actions of the designating official, and which will be set forth in the Certificate of Appointment (Standard Form 1402). Warrant limitations may include but are not limited to requirements for prior reviews, approvals, and other controls.

(6) "GSA established source contracts" means contracts established by GSA and other Federal agencies when GSA is required by regulation to use those contracts as Government supply sources. (See Part 8 of the FAR.)

[49 FR 10792, Mar. 22, 1984, as amended at 50 FR 2285, Jan. 16, 1985; 51 45892, Dec. 23, 1986]

501.603-1 General.

The authority to appoint contracting officers is delegated to the Associate Administrator for Acquisition Policy. See the Delegation of Authority Manual (ADM P 5450.39B).

[51 FR 45893, Dec. 86, 1986]

501.603-2 Selection.

(a) Contracting officers (CO's) shall be designated only in those instances in which a valid organizational need for warranted personnel can be demonstrated. Factors to be considered in assessing the need for a contracting officer designation include volume of actions, complexity of work, and organizational structure.

(b) To certify organizational needs and ensure that the candidate meets minimum CO qualifications, a completed GSA Form 3410, Request for Appointment, shall be signed by the candidate's immediate supervisor and submitted to the appropriate warrant board along with a statement of fact. The Request for Appointment shall be accompanied by GSA Form 3409, Personal Qualifications Statement for Appointment as a Contracting Officer, prepared and signed by the candidate.

(c) Warrant boards will evaluate candidates for CO warrants based on supervisory recommendations, experience, education, training, business acumen, judgement, character, ethics, and reputation. Warrant boards may establish additional qualification requirements, as appropriate. Minimum qualifications of contracting officers (purchasing contracting officers (PCO's) and administrative contracting officers (ACO's)) are based on a combination of training and experience with consideration of relevant academic credit or degrees earned.

(d) The following warrant levels are equated with dollar value of individual transactions (e.g., contract, modification, supplemental agreement, etc.) and not the aggregate contract value.

Basic—up to and including $25,000 per open market purchase or the maximum order limitation for orders placed against established contracts;
Intermediate—up to and including $100,000;
Senior—unlimited.

(1) *Knowledge and skill.* Written statements of fact must be presented by supervisors of CO candidates to the warrant board, covering the knowledge and abilities of candidates and their specific level of skill which are appropriate to the activity in the following areas:

(i) Contract Placement.

(ii) Contract Administration.

(iii) Contract Termination.

(iv) Real Property Leasing.

(v) Sales.

(2) *Experience requirements for contracting officer candidates.* Warrant boards shall consider contracting experience in terms of basic, intermediate, and senior levels.

(i) *Basic experience.* Candidates must have a least one year of current (within last 5 years) experience with progressive work assignments and orientation.

(ii) *Intermediate experience.* Candidates must have at least two years of current (within last 5 years) experience with progressive assignments leading to broader technical ability.

(iii) *Senior experience.* Candidates must have at least three years of current (within last 5 years) experience with progressive assignments and broad technical ability.

(3) *Mandatory training requirements for contracting officer candidates.* A candidate must complete the minimum core training required for the warrant levels described below. To qualify for an intermediate level warrant, a candidate must complete the basic and intermediate level training. A candidate must complete the basic, intermediate, and senior level training in order to qualify for a senior level warrant. Supervisors are responsible for providing their employees with advice and assistance necessary to complete this required training. Mandatory training includes the following general topics as a minimum:

(i) *Basic level.* (Does not apply to realty leasing and sales personnel.)

(A) Small Purchases and Federal supply schedules—40 hours,

(B) Basic Acquisition—40 hours.

(C) Contract Administration for Program Personnel—40 hours. (Applicable to GSA Buildings Managers only.)

(ii) *Intermediate level.* (Does not apply to realty leasing and sales personnel.)

(A) Contract Law—60-80 hours,

(B) Negotiated Contracts and Negotiation Techniques—80 hours,

(C) Formal Advertising or Sealed Bidding—40 hours,

(D) Contract Administration—40 hours,

(E) Cost and Price Analysis or Cost Analysis—40 hours,

(F) GSA Price Analysis—40 hours,

(G) Government ADP Resource Acquisition—40 hours (Applicable to ADP acquisition personnel only.)

(H) Termination Settlements—40 hours,

(I) Services Contracting—40 hours,

(J) Public Utility Contracts—40 hours (Applicable to personnel handling public utility procurements.)

(K) Architect-Engineer Contracting—40 hours (Applicable to personnel handling Architect-Engineer service procurements.)

(L) Construction Contracts—40 hours. (Applicable to personnel handling procurement of construction.)

(iii) *Senior level (over $100,000).* (Does not apply to leasing and sales.)

(A) Executive Seminar in Acquisition—24-40 hours,

(B) Advanced Procurement Managment—40 hours, and

(C) Advanced Contract Administration—40 hours.

(iv) *Non-1102 COs.* COs not classified as 1102 employees and who do not make open market purchases greater than small purchases will not be required to take the Basic Acquisition course.

(v) *Realty leasing personnel.*

(A) Real Property Leasing/Law of Leasing—40-60 hours.

(B) Negotiated Contracts or Negotiation Techniques—24-40 hours, and

(C) Cost and Price Analysis or Pricing of Lease Proposals—40 hours, and

(D) GSA Price Analysis—40 hours.

(vi) Sales contracting personnel.

(A) Basic Acquisition—40 hours,

(B) Contract Law—60-80 hours.

(C) Formal Advertising or Sealed Bidding—40 hours,

(D) Negotiated Contracts or Negotiation Techniques—40 hours, and

(E) Sales and Disposal of Government Property—40 hours.

(vii) *Construction contracting officer representatives (CORs).* Individuals nominated for warrants limited to the issuance of change orders up to $25,000 may be required by warrant boards to complete the Basic Acquisition course and the Construction Contracting course.

(4) *Substitution of experience for training.* Individuals currently serving and classified in 1102 positions for an uninterrupted period of three years will not be required to take the basic level courses under the COWP if they are proposed for intermediate or senior level warrants.

(5) *Substitute courses.* Training courses of equivalent content will be allowable substitutes. Personnel involved in motor pool operations may substitute the GSA Fleet Management Procurement course for the requirement for 40 hours of training in small purchases and Federal supply schedules. Courses from the following sources are considered to be equivalent provided the training meets the minimum hours required in (c) of this subsection:

(i) Training from a Government-sponsored source such as U.S. Army Logistics Management Center (ALMC).

(ii) Training from a source listed in the Defense Management Education and Training (DMET) Catalog or the Federal Acquisition Institute (FAI) Catalog.

(6) *Refresher training.* Contracting officers in the Federal Supply Service are encouraged to attend the Contract Quality Assurance course (40 hours) in fulfilling the continuing education requirements of § 501.603-3(c).

(7) *Tests.* Tests administered either by the GSA Office of Civil Rights, Organization, and Training or by DOD training facilities may be taken as an alternative to training, to demonstrate career knowledge. The GSA training office may be contacted for referral to DOD testing facilities such as Fort Lee, VA. Other tests may be considered on a case by case basis.

[49 FR 10792, Mar. 22, 1984, as amended at 50 FR 2285, Jan. 16, 1985; 50 FR 10037, Mar.

13, 1985; 51 FR 16690, May 6, 1986; 51 FR 21175, June 11, 1986; 51 FR 45893, Dec. 23, 1986]

501.603-3 Appointment.

(a) The recommending official may nominate candidates for contracting officer warrants to the designating official subject to the approval of the warrant board. Only the Administrator or the Associate Administrator for Acquisition Policy is authorized to sign the Standard Form 1402, Certificate of Appointment.

(b) Specific warrant limitations imposed upon the authority of contracting officers either by delegation or by actions of the warrant boards shall be set forth in certificates of appointment or otherwise conveyed in writing to designated contracting officers.

(c) As a condition of continuing designation all warranted COs, except those on interim appointments, shall complete 40 hours of formal procurement training, at least once every 3 years, beyond the minimum core requirements in order to maintain competency.

(d) As a part of the acquisition management reviews conducted by the Office of Acquisition Policy, Office of Acquisition Management and Contract Clearance (VC), applicable appointment documents will be reviewed periodically to determine the adequacy of local procedures, practices, and appointments. (See GSA Acquisition Management Assistance Review Program (ADM 2851.4).)

[49 FR 10792, Mar. 22, 1984, as amended at 51 FR 16691, May 6, 1986]

501.603-4 Termination.

(a) The appointment of a contracting officer may be revoked at any time by the designating official. Contracting officer appointments shall be revoked and the warrant certificate shall be returned to VC when:

(1) The appointee no longer meets required qualifications;

(2) There is no longer a clear and convincing need for the appointment;

(3) The effective period of the appointment has expired; or

(4) There exists evidence of malfeasance or gross incompetence.

(b) Contracting officer appointments terminate when the appointee is reassigned from the position or activity held at the time of appointment.

(c) Contracting officers whose appointments are revoked or terminated, shall be provided a written notice by the designating official stating the reasons therefor.

(d) Warranted personnel shall be reassessed by each appropriate warrant board when any organization change occurs which alters the procurement function.

(1) VC shall be notified briefly, in writing, by each affected organization as soon as personnel actions are completed that reassign warranted personnel from one service/office or Region to another.

(2) Existing warrants remain in effect until they can be reconsidered in light of new organizational structures.

(3) Reassessement of warrant needs should be delayed until movement of functions and personnel is completed.

(e) When warranted COs transfer within an organization, the warrant certificate shall be terminated and returned to VC. This restriction does not apply to GSA buildings managers that are reassigned from one field office to another provided the individual occupies a similar position and VC is notified of the change in location. A copy of the termination notice shall be provided to the CO, the previously assigned duty station and VC.

(f) The provisions of FAR 1.603-4 apply to this section.

501.603-70 Changes or suspensions of contracting officer appointments.

(a) *Changes.* When a designating official determines to change or limit the appointment of a contracting officer without revocation, a new Certificate of Appointment shall be issued. When the change involves responsibility in a new functional area wherein the contracting officer has not demonstrated minimum qualifications, the proposed change may be requested by the recommending official, but must be approved by the appropriate warrant board and the Assistant Administrator for Acquisition Policy.

(b) *Suspension of designation.* Warrant boards or HCAs, pursuant to their responsibilities as set forth under 501.601-70, may suspend a CO's warrant for a temporary period not to exceed 30 days for failing to exercise sound business judgment in placing or administering procurements or for other minor improprieties in the execution of contracting officer responsibilities. Within the 30 day suspension period the Warrant Board or HCA shall either lift the suspension or recommend the Assistant Administrator for Acquisition Policy terminate the warrant.

501.603-71 Interim appointment provisions.

(a) Individuals who do not meet minimum qualifications as described in 501.603-2, may be appointed on an interim basis if warrant boards consider experience and past performance and make recommendations for interim appointments. All minimum training requirements shall be scheduled and met within a reasonable period of time. At least two of the required courses or equivalency tests shall be successfully completed each year after the date of appointment to avoid losing the warrant.

(b) Failure to successfully complete minimum training requirements within this timeframe may result in the loss of the warrant. Prior to revoking any warrant, the Office of Acquisition Policy will periodically review training records of warranted personnel and determine whether specific individuals are making adequate progress towards program completion.

(c) Instances that may require the use of interim appointments may include, but are not limited to the following:

(1) Organizational changes;

(2) Reduction in Force proceedings; or

(3) Sudden extreme increases in the number of procurement requests.

501.603-72 Contracting officer warrant boards.

(a) Separate contracting officer warrant boards shall be established for each region. Within the Central Office the head of each service of staff office shall perform the function of the warrant board.

(b) The purpose of the contracting officer warrant boards is to receive, evaluate, and process requests for appointment of Contracting Officers under the GSA-wide Contracting Officer Warrant Program prescribed in this Subpart.

(c) Warrant boards shall consist of supervisory personnel at the SES or GM/GS-14/15 levels representing contracting offices in each region and, in an advisory capacity, representatives of the Office of Personnel and Office of General Counsel.

(1) A minimum of four members constitute a quorum for a warrant board.

(2) Personnel from the Office of Acquisition Policy shall participate randomly in the actions of each warrant board, as appropriate.

(3) Assistant Regional Administrators shall chair regional warrant boards.

(4) Except for Office of Acquisition Policy personnel, all warrant board members and chairpersons shall be appointed by the Regional Administrators on an ad hoc basis.

(d) The suggested (optional) composition of regional warrant boards may include:

Deputy Regional Administrator, Chairperson
Director, OPCO
Senior Procurement Analyst, OPCO
Regional Controller
Assistant Regional Administrator, Office of Information Resource Management
Assistant Regional Administrator, Office of Federal Supply and Services
Assistant Regional Administrator, Office of Public Buildings and Real Property
Regional Personnel Office (Advisory)
Regional Counsel (Advisory)

501.603-73 Post appointment maintenance of warrants.

(a) The original Certificate of Appointment shall be provided to the appointed contracting officer and displayed at the contracting officer's duty station. The designating official shall have three copies of the signed original Certificate of Appointment reproduced and numbered for distribution.

(1) Copy 1 shall be distributed to and maintained by the cognizant headquarters office for each affected service/office or the regional Office of Project Control and Oversight (OPCO).

(2) Copy 2 shall be provided to and maintained by the Office of Acquisition Policy, Office of Acquisition Management and Contract Clearance (VC).

(3) Copy 3 shall be provided to and maintained by the Office of Finance (BCGP).

(b) Certificates of Appointment shall be serially numbered for each Central Office service/office and for each region.

(c) The Privacy Act of 1974 applies to the information collected during selection, designation and appointment of contracting officers.

501.670 Legal review and assistance.

This section sets forth the responsibilities of contracting personnel and assigned legal counsel in obtaining and providing legal review and assistance.

501.670-1 Applicability.

The provisions of the section apply to all GSA organizational elements having contracting responsibility, as defined in 501.670-2.

501.670-2 Definitions.

(a) *Contracting.* For the purpose of this subpart, the term "contracting" includes the procurement or disposal by contract or lease of any interest in real or personal property, or services. To the extent that specific language herein reflects terminology used in procurement, it is understood that counterpart disposal terminology is intended for matters involving disposals; likewise, to the extent that specific language herein reflects terminology involving contracts, it is understood that counterpart leasing language is intended for matters involving leases.

(b) *Legal review.* Legal review is a formal process whereby assigned counsel analyzes a matter to ensure legal sufficiency (i.e., that the proposed action is in compliance with applicable laws, regulations, and directives). During this process, counsel is also required to bring to the attention of appropriate contracting officials any problems concerning the matter under review and should object on policy or other grounds where such action appears warranted, notwithstanding approval for legal sufficiency.

(c) *Legal assistance.* Legal assistance is a process whereby assigned counsel provides legal guidance with respect to questions or problems that arise during the contracting process. Assistance need not be limited to matters of legal sufficiency.

501.670-3 Responsibilities.

(a) *Contracting officials.* (1) Contracting officials are expected to exercise sound judgment in obtaining legal review or assistance before taking any action that would affect the rights or obligations of the Government, a contractor, an offeror, or a potential offeror. Contracting officials should seek legal assistance throughout the contracting cycle, particularly when there is doubt or controversy as to the propriety or legal sufficiency of an action, or the interpretation or application of existing statutes, policies, regulations, and directives.

(2) When legal review or assistance is requested by a contracting official, the official shall provide assigned counsel with all pertinent information. When appropriate, the official shall brief assigned counsel regarding the facts and points at issue and provide a detailed rationale for the proposed action. Legal review or assistance should be requested in a timely fashion in order to allow assigned counsel sufficient time to respond to the matter in issue. Counsel's approval, comments, or objections should be documented and retained as part of the contract file.

(b) *Legal counsel.* It is the responsibility of assigned counsel to provide timely assistance with respect to a broad range of legal and business problems arising during the contracting process and to ensure that proposed contractual actions comply with applicable laws, regulations, and directives. When legal review is required on any contract-related matter, the approval of counsel shall attest to the legal sufficiency of the action or document.

501.670-4 Legal review.

The following matters shall be submitted to assigned counsel, before action being taken thereon, for legal review and, where appropriate, written approval. Heads of contracting activities, in conjunction with assigned counsel, are encouraged to establish more stringent supplemental criteria for legal review when available resources make such supplemental requirements practicable. Copies of supplemental directives shall be forwarded to the Assistant Administrator for Acquisition Policy and to the General Counsel.

(a) Solicitations which deviate from standard terms or conditions provided for by regulation or other appropriate authority.

(b) Alleged mistakes in bid.

(c) Protests (including small business size protests).

(d) Determinations and findings required by the FAR, GSAR, or other appropriate authority (see FAR Subpart 1.7 and GSAR Subpart 501.7) and justifications to use other than full and open competition (see FAR Subpart 6.3).

(e) Offers indicating that contingent fee has been, or may be, paid.

(f) Matters involving the disclosure of offers before opening and determinations as to whether such disclosure was made collusive intent.

(g) Decisions involving the nonapplication of, or any exemptions proposed to be taken from, the subcontracting plan requirements of Pub. L. 95-507.

(h) Questions regarding the proper use of appropriations or other funds.

(i) Proposed awards to other than low offerors.

(j) Proposed no-awards for reasons other than excessive prices.

(k) Proposed letter contracts.

(l) Proposed contract awards subject to the requirements of GSA Order, Contract Clearance (APD 2800.1B).

(m) Termination actions, including pretermination (i.e., "cure") letters.

(n) Contract disputes of any nature.

(o) Waivers of material contract terms, conditions or specifications.

(p) Assignments of claims or rents, and change of name and novation agreements.

(q) Contract claims, actions taken under the disputes clause (including final decision letters), and memorandums of position and appeal files in case appealed to the General Service Board of Contract Appeals or U.S. Claims Court.

(r) Recommendations relative to suspending or debarring a concern or individual.

(s) Freedom of Information Act (5 U.S.C. 552) and Privacy Act (5 U.S.C. 552a) matters.

(t) Proposed responses to Congressional inquiries, and to General Accounting Office (GAO) and Inspector General audit reports which pertain to the legality of proposed or past actions.

(u) Deviations from the FAR, GSAR, or other directives.

(v) Matters relating to litigation before the courts or the General Services Board of Contract Appeals.

(w) Late bids, offers, and modifications.

(x) Assessment of administrative costs other than excess costs.

(y) Ratifications of unauthorized contractual commitments.

[49 FR 10792, Mar. 22, 1984, as amended at 50 FR 10037, Mar. 13, 1985]

501.670-5 Legal assistance.

The following matters illustrate areas in which legal issues are likely to arise; accordingly, contracting officials are encouraged to pay special attention to these areas and to present problems or questions to assigned counsel for assistance, as appropriate, in a timely manner.

(a) Preliminary questions or problems relating to matters requiring legal review.

(b) Meetings scheduled with legal representatives of private parties or meetings where legal issues are likely to be discussed.

(c) Solicitations involving repurchase actions against the account of a defaulted contractor.

(d) Matters concerning nonresponsiveness or nonresponsibility.

(e) Matters involving the application of the Buy American Act (41 U.S.C. 10 et seq.) or related provisions of law.

(f) Matters involving the application of labor statutes (e.g., Walsh-Healey Act, Service Contract Act, etc.).

(g) Matters involving small business or labor surplus areas concerns.

(h) Matters involving the consideration of subcontracting plans as required by Pub. L. 95-507.

(i) Matters involving the withholding of payments to contractors for Department of Labor wage/rate violations.

(j) Matters involving the adequacy of bid guarantees and payment or performance bonds

(k) Matters relating to contractor indebtedness, bankruptcy, or financing.

(l) Matters involving the use of special and directed sources of supply, e.g., procurement of supplies and services from Federal Prison Industries or from workshops for the blind and other severely handicapped.

(m) Matters involving eligibility to use GSA supply sources.

[49 FR 10792, Mar. 22, 1984, as amended at 50 FR 10037, Mar. 13, 1985]

501.670–6 Waivers.

The General Counsel may waive the legal review requirements. Waivers may be granted either on a case-by-case basis or in classes of cases. A request for waiver may be made in writing by an Assistant General Counsel or regional counsel in conjunction with the head of a contracting activity. Under circumstances of extreme urgency, requests for waiver may be made and granted orally but written documentation of the waiver shall be made as soon as time permits.

501.671 Audit of contractor's records.

501.671–1 General.

The Assistant Inspector General-Auditing and the Field Audit Offices conduct contract audits of contractors' records to the extent that such audits are required by law, regulation, or sound business judgment. These audits include the conduct of periodic or special request audits of contractors deemed warranted because of such matters as the financial condition, integrity, and reliability of the contractor and prior audit experience, adequacy of the accounting system, and the amount of unaudited claims. So that the Government can benefit to the maximum extent from these audits, a coordinated and cooperative effort shall be made by contracting officers, technical specialists, and finance and audit personnel. It is the responsibility of the contracting officer to have an audit clause inserted in all contracts subject to audit pursuant to 501.671-3.

501.671–2 Purpose of audit.

Audits are conducted to advise and make recommendations to the contracting officer concerning the following:

(a) Propriety of amounts paid, or to be paid, by GSA to contractors when such amounts are based on a cost or time determination or on variable features related to the results of contractors' operations;

(b) Adequacy of measures taken by contractors regarding the use and safeguarding of Government assets under their custody or control;

(c) Compliance by contractors with contractual provisions having financial implications such as progress payments, advance payments, guaranteed loans, cash return provisions, and price adjustments. The adequacy of a contractor's accounting system and controls shall be evaluated by contract audit before inclusion of a Progress Payments clause. A similar evaluation shall be made prior to the making of any advance payments or guaranteed loans pursuant to FAR Part 32 and GSAR Part 32.

(d) Reasonableness of contractor's settlement proposals in termination of contracts;

(e) Compliance with contract provisions; and

(f) Contractor's financial condition and ability to perform or to continue to perform under Government contracts.

501.671–3 Types of contracts subject to audit.

(a) The following types of contracts, (excluding small purchases) shall include either the Audit-Negotiation clause prescribed in FAR 15.106-2 or the Examination of Records by GSA clause at GSAR 552.215-70 and are subject to audit.

(1) Cost-reimbursement type contracts;

(2) Contracts involving the use or disposition of Government-furnished property;

(3) Contracts that provide for advance payments, progress payments based on costs, or guaranteed loans;

(4) Contracts containing a price warranty or price reduction clause;

(5) Contracts or leases involving income to the Government when the income is based on operations that are under the control of the contractor or lessee;

(6) Fixed-price contracts or leases with economic price adjustment, with incentives and with prices redetermination;

(7) Requirements and indefinite quantity (call-type) contracts;

(8) Time-and-material, labor-hour, and letter contracts; and

(9) Leases when the rental is subject to adjustment based on negotiated operating cost escalation.

(b) Inclusion of the contract clause in 552.215-70 (whether or not modified) in contracts does not affect in any way the requirements for use of the Examination of Records clause permitting review of contractor books and records by the Comptroller General or the clauses on audit and records pertaining to the verification of cost or pricing data.

(c) A copy of each contract or modification of the types described in 542.672 subject to audit shall be furnished to the Assistant Inspector General for Auditing (JA), General Services Administration, Washington, DC 20405, or to the Field Audit Office, as appropriate, simultaneously with distribution of other copies of the contract.

[49 FR 10792, Mar. 22, 1984, as amended at 50 FR 2286, Jan. 16, 1985]

501.672 Payments under contracts subject to audit.

501.672-1 General.

(a) The contracting officer shall not approve the initial payment invoice or voucher until he has consulted with the Assistant Inspector General—Auditing or the Field Audit Office regarding cost or other supporting data as required under:

(1) Cost-reimbursement type contracts:

(2) The cost-reimbursement portion of fixed-price type contracts;

(3) Time and materials or labor-hour contracts; or

(4) Fixed-price contracts providing for: (i) Progress payments based on costs, (ii) advance payments, (iii) guaranteed loans, or (iv) incentives or redetermination.

(b) The contracting officer shall not approve the final payment invoice or voucher for such contracts, nor for the final payment of settlement of other contracts subject to audit prior to the: (1) Receipt and review of the contract audit report or (2) consultation with the Assistant Inspector General for Auditing or the Field Audit Office if no audit is to be conducted; provided, that this paragraph (b) shall not apply to fixed-price contracts with escalation where no price revision (upward or downward) is to be made.

501.672-2 Submission and processing of invoices or vouchers.

(a) Contractors shall be required to submit invoices or vouchers to the contracting officer. The processing of invoices or vouchers prior to payment for work or services rendered shall include a review by the contracting officer, or his designated representative, to determine that the nature of items and amounts claimed are in consonance with the contract terms, represent prudent business transactions within any stipulated contractual limitations. The contracting officer must ensure that these payments are commensurate with physical and technical progress under the contract. If the contractor has not deducted from his claim amounts which are questionable or which are required to be withheld, the contracting officer shall make the required deduction, except as provided in 501.672-3.

(b) Subject to the provisions of 501.672-1, approval by the contracting officer of any payment, including any specific approval as to the nature or amount of the cost, shall be noted on (or attached to) the invoice or voucher. The invoice or voucher shall be forwarded to the appropriate accounting center and retained therein after certification and scheduling for payment to a disbursing office.

501.672-3 Action upon receipt of an audit report.

Audit reports shall be furnished to the contracting officer, with a copy to the appropriate accounting center. Upon receipt of an audit report, the contracting officer shall, pursuant to contract terms, determine the allowability of all costs covered by audit, giving full consideration to the auditor's recommendations. When the contracting officer is in doubt or questions the recommendations of the auditor, deductions need not be made from invoices or vouchers for provisional payments. In these cases, the contracting officer shall confer with the auditor and other appropriate Government personnel (such as a price specialist of legal counsel) to determine what further action should be taken regarding the items of cost in question. If the contracting officer disagrees with the auditor's recommendations, the contracting officer shall prepare a statement for the contract file to support and justify his decision and shall furnish the auditor with a copy of the statement.

501.672-4 Suspensions and disapprovals of amounts claimed.

The contracting officer shall notify the appropriate accounting center in writing when amounts claimed for payment are: (a) Suspended, (b) disapproved as not being allowable according to contract terms, or (c) not reasonably incident or allocable to performance of the contract. This notice by the contracting officer shall be the basis for the issuance by the accounting center of GSA Form 533, Administrative Difference Statement. A copy of GSA Form 533 shall be attached to each copy of the invoice or voucher from which the deduction has been made, including an explanation of the deduction. Control over the issuance of GSA Form 533 shall be maintained by the accounting center.

501.673 Additional internal controls.

As supplement to the contractual right to audit contractor records in cost-reimbursement type, time and materials, labor-hour, requirements and indefinite quantity (call-type) contracts, the contracting officer (with the assistance of the Assistant Inspector General-Auditing or the Field Audit Office) shall establish appropriate internal controls or procedures prior to the performance of those contracts with respect to any flexible or variable features. For example, if a time and materials or labor-hour contract is performed (on a Government facility or elsewhere) subject to observation or overall supervision by Government personnel approval of time records may be provided for as incidental to the Government supervision. Any reasonable and reliable method or procedure may be established to account for such matters as the time spent on the job and materials or supplies received which will assist the contract auditor and the contracting officer to determine the correctness of the charges to the contract.

501.674 Releasing or withholding of audit reports.

The Freedom of Information Act generally requires the disclosure of Government records subject to certain exceptions. It may be to the benefit or detriment of the Government to release contract audit reports or portions of them depending upon the circumstances. However, because of the complexity of the matter, contracting officers shall consult with both the Assistant Inspector General-Auditing and the Office of General Counsel, prior to the release or withholding of such information.

501.675 Ratification of unauthorized contractual commitments.

[50 FR 2286, Jan. 16, 1985]

EFFECTIVE DATE NOTE: Section 501.675 was temporarily removed at 53 FR 7366, Mar. 8, 1988. The temporary regulation expires March 7, 1989.

§ 501.675-1 Definitions.

(a) "Ratification" means the act of confirming an unauthorized contractual commitment.

(b) "Unauthorized contractual commitment" means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into the agreement on behalf of the Government.

(c) "Otherwise proper" means the agreement could have been entered into by a Government official with the authority to obligate the Government contractually without violating any statute or regulatory requirement implementing a statute.

[50 FR 2286, Jan. 16, 1985]

Effective Date Note: Section 501.675-1 was temporarily removed at 53 FR 7366, Mar. 8, 1988. The temporary regulation expires March 7, 1989.

501.675-2 Authority.

(a) Subject to the limitations and in accordance with the procedures prescribed in GSAR 501.675-3, contracting officers may ratify a contractual commitment made by an employee who did not have the requisite authority to enter into a contract on the Government's behalf if the head of the contracting activity (HCA) has approved the ratification action.

(b) The HCA may approve ratification of an unauthorized contractual commitment if—

(1) Ratification is in the Government's interest;

(2) The resulting contractual action would otherwise have been proper if made by an authorized contracting officer;

(3) The price is determined to be fair and reasonable; and

(4) Funds are available to pay for the acquisition.

[50 FR 2286, Jan. 16, 1985]

Effective Date Note: Section 501.675-2 was temporarily removed at 53 FR 7366, Mar. 8, 1988. The temporary regulation expires March 7, 1989.

501.675-3 Procedures.

(a) Generally, the Government is not bound by agreements or contractual commitments made by persons to whom contracting authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the GSAR, and good acquisition practice. Therefore, such unauthorized contractual commitments should be considered as serious employee misconduct and consideration given to initiating disciplinary action. In any instances where suspected irregularities may involve fraud against the Government, or any type of misconduct which might be punishable as a criminal offense, either the employee's supervisor or the contracting officer should immediately report the matter to the Office of the Inspector General with a request for a complete investigation.

(b) The individual who made the unauthorized commitment shall furnish the appropriate contracting director all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to, a statement as to why normal acquisition procedures were not followed, why the contractor was selected and a list of other sources considered, description of work or products, estimated or agreed contract price, citation of appropriation available, and a statement regarding the status of the performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the contracting director may waive the requirement that the responsible employee initiate and document the request for ratification; provided that a written determination is made stating that a commitment was in fact made by an employee who shall be identified in the determination.

(c) The appropriate contracting director will assign the request for ratification action to an individual contracting officer for processing. The contracting officer assigned the action will be responsible for—

(1) Reviewing and determining the adequacy of all facts, records, and documents furnished, and for obtaining any additional material required;

(2) Obtaining an opinion from legal counsel as to whether the acquisition can be expressly ratified or has been implicitly ratified;

(3) Stating whether the price involved is considered fair and reasonable;

(4) Determining that sufficient funds are available to pay for the acquisition; and

(5) Preparing a summary statement of facts addressing the foregoing to include a recommendation as to whether the transaction should be ratified and stating the reasons therefor. Advice against express ratification should include a recommendation for other appropriate disposition. When express ratification is not permissible due to legal improprieties in the procurement, the contracting officer may recommend that payment be made for services rendered on a quantum meruit basis (the reasonable value of work or labor) or for goods furnished on a quantum valebant basis (the reasonable value of goods sold and delivered) provided there is a showing that the Government received a benefit and that the unauthorized action has been impliedly ratified by authorized contracting officials of the Government.

(d) The request for ratification, the information required by paragraphs (a), (b), and (c) above, and a recommendation for corrective action to preclude recurrence, shall be forwarded, through appropriate channels, to the HCA for consideration.

(e) The HCA, upon receipt and review of the complete file, may approve the ratification if determined to be in the Government's best interest, direct payment be made on a quantum meruit or quantum valebant basis, or direct other disposition as appropriate. Acquisitions which have been approved for ratification shall be forwarded to the appropriate contracting officer for issuance of the necessary contractual documents. If the request for ratification is not justified, the HCA shall return the request without approval and provide an explanation for the decision not to approve ratification.

(f) Each HCA shall maintain a separate file containing a copy of each request for approval to ratify an unauthorized contractual commitment. This file shall be made available for review by the Office of Acquisition Policy and the Inspector General.

[50 FR 2286, Jan. 16, 1985]

EFFECTIVE DATE NOTE: Section 501.675-3 was temporarily removed at 53 FR 7366, Mar. 8, 1988. The temporary regulation expires March 7, 1989.

Subpart 501.7—Determinations and Findings

SOURCE: 50 FR 10037, Mar. 13, 1985, unless otherwise noted.

501.700 Scope of subpart.

This subpart prescribes general policies and procedures regarding the requirements for, and contents and format of determinations and findings (D&F's). The general requirements for the most commonly used D&F's are outlined in GSAR 501.770. Specific information on the various D&F's can be found in the part of the FAR or the GSAR which requires the D&F. This subpart shall not be considered to be an all inclusive listing of D&F requirements.

501.704 Content.

501.704-70 Sample formats.

(a) *Type of contract.*

(1) *Cost reimbursement contracts.* The following format is prescribed for determinations required by FAR 16.301-3, 16.302, 16.303, 16.304, 16.305, 16.306, 16.403, and 16.404.

GENERAL SERVICES ADMINISTRATION
DETERMINATIONS AND FINDINGS

Authority to Use Cost Reimbursement Type Contract

Findings

I hereby find that:

(1) The (Service/Office title) proposes to contract for (describe work, service, or product) (identify program or project). The estimated cost is ($——) (if contract is CPFF type, insert "plus a fixed fee of ($—— which is —— percent of the estimated cost exclusive of fee").

(2) (Set forth facts and circumstances that show why it is impracticable to secure property or services of the kind or quantity required without the use of the proposed type

of contract or why the proposed method of contracting is likely to be less costly than other methods.)

(3) These findings are made pursuant to (cite appropriate statute and/or regulation).

Determinations

I hereby determine that:

On the basis of the above findings, it is impracticable to secure the property or services of the kind or quality required without the use of a (cost, cost-sharing, or cost-plus a-fixed-fee[1]) type of contract, or the (cost, cost sharing, or cost-plus-a-fixed-fee[2]) method of contracting is likely to be less costly than other methods.[1]

Date ______________________

____

(Signature)

(2) *Time and material or labor-hour contracts.* The format prescribed by (a)(1) above shall be followed except that the final paragraph shall read substantially as follows:

I hereby determine that:

On the basis of the above findings, no other type of contract will suitably serve for the procurement of the required work or services.

(3) *Letter contracts.* The following format is prescribed for determinations required by FAR 16.603-3:

GENERAL SERVICES ADMINISTRATION
DETERMINATIONS AND FINDINGS

Authority to Use a Letter Contract

Findings

I hereby find that:

(1) The (Service/Office title) proposes to contract for (describe the work, service, or product) (identify program or project). The estimated cost is $—— (complete if possible).

(2) (Set forth facts and circumstances that show why no other contract is suitable. Explain why the Government's interests demand that the contractor be given a binding commitment so that work can start immediately, and why it is not possible to negotiate a definitive contract in time to meet the requirements.)

(3) These findings are made pursuant to (cite appropriate statute and/or regulations).

Determinations

I hereby determine that:

On the basis of the above findings, it is impracticable to secure the property or services of the kind or quality required within the time frame required without the use of a letter contract.

Date ______________________

____

(Signature)

(b) *Use of procedures that are less than full and open competition.*

(1) *Exclusion of source(s).* The following format is prescribed for determinations and findings made under section 303(b)(1) of the Federal Property and Administrative Services Act (41 U.S.C. 253(b)(1)) and FAR 6.202.

GENERAL SERVICES ADMINISTRATION
DETERMINATIONS AND FINDINGS

Authority to Exclude Source(s) From Competition on an Individual Contract Under 41 U.S.C. 253(b)(1)

Findings

I hereby find that:

(1) The (Service/Office title) proposes to procure (describe work to be performed or product to be delivered) (identify program or project and state estimated contract price).

(2) (Set forth the facts and circumstances which show that it is necessary to exclude a particular source(s) in order to establish or maintain an alternative source or sources for the supplies or services being acquired. Explain how this action will (a) increase or maintain competition and likely result in reduced overall costs, (b) be in the interest of national defense by having a facility available for furnishing the supplies or services in case of a national emergency or industrial mobilization, or (c) be in the interest of national defense by establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.)

Determinations

I hereby determine that:

On the basis of the above findings, it is necessary to exclude (identify source(s)) from (identify the contract action) in order to establish or maintain an alternative source or sources for the supplies or services being acquired because to do so will (describe benefits as required by FAR 6.202).

Date ______________________

____

(Signature)

(2) *Not in public interest.* The following format is prescribed for determinations and findings made under

---

[1] Use applicable word or statement.

[2] Use applicable words.

section 303(c)(7) of the Federal Property and Administrative Services Act (41 U.S.C. 253(c)(7)) and FAR 6.302-7:

General Services Administration
Determinations and Findings

Authority Not to Provide for Full and Open Competition on an Individual Contract Under 41 U.S.C. 253(c)(7)

Findings

I hereby find that:

(1) The (Services/Office title) proposes to procure (describe work to be performed or product to be delivered) (identify program or project and state estimated contract price).

(2) (The contents of the justification prepared by the contracting officer, in accordance with FAR 6.302-7 and 6.303-2, shall be included as a part of the findings to support the determination.)

Determinations

I hereby determine that:

On the basis of the above findings, it is not in the public interest to provide for full and open competition in the procurement of (describe work to be performed or product to be delivered) (identify program or project).

Date ————————————————

————————————————————

(Signature)

(c) *Advance payments.* The prescribed format for advance payments determinations and findings is set forth in FAR 32.410.

(d) *Buy American.* The prescribed format for nonavailability determinations and findings required by FAR 25.102(a)(4) and 25.202(a)(3) is set forth in GSAR 525.108-70.

(e) *Determinations pending decision on protest to GAO*—(1) *Protest filed before award.* The following format is prescribed for determinations and findings required by FAR 33.104(b):

General Services Administration
Determination and Findings

Authority To Proceed With Award Pending a Decision by GAO on Bid Protest

Findings

I hereby find that:

(1) The (Services/Office title) proposes to procure (describe work to be performed or product to be delivered). The estimated cost is ——.

(2) Solicitation (identify solicitation) was issued on ——— and bids/proposals were received on ——.

(3) On ——— (insert date GAO received protest) (identify protestor by name) submitted a protest to GAO concerning the solicitation (identify solicitation).

(4) (Set forth urgent and compelling circumstances which significantly affect the interests of the United States and will not permit waiting for the decision of GAO on the protest.)

(5) Award is anticipated within 30 calendar days from the date this determination and findings is signed.

(6) These findings are made pursuant to 31 U.S.C. 3553(c)(2) and FAR 33.104(b)(1).

Determination

I hereby determine that:

On the basis of the above findings, urgent and compelling circumstances will not permit waiting for the decision of the GAO on the protest filed by (identify protestor and solicitation).

Date ————————————————

(Signature) ——————————————

(2) *Protest filed after award.* The following format is prescribed for determinations and findings required by FAR 33.104(c):

General Services Administration
Determination and Findings

Authority To Continue Contract Performance Pending a GAO Decision on Protest Filed After Award

Findings

I hereby find that:

(1) The (Services/Office title) awarded a contract to (name contractor) on ——— for furnishing of (identify product, service or work to be performed). The contract is valued at ——— and resulted from solicitation ———.

(2) On ——— (insert date GAO received protest) (identify protestor by name) submitted a protest to GAO concerning contract number ——.

(3) (Set forth the facts and circumstances which indicate that: (a) continued contract performance will be in the best interest of the United States; or (b) urgent and compelling circumstances exist that significantly affect the interest of the United States and will not permit waiting for the GAO's decision.)

(4) These findings are made pursuant to 31 U.S.C. 3553(d)(2) and FAR 33.104(c)(2).

Determination

I hereby determine that:

On the basis of the above findings, (either (a) continued contract performance will be in the best interest of the United States, or

(b) urgent and compelling circumstances exist which will not permit waiting for the GAO's decision) and that accordingly contract performance under contract —— may continue pending GAO's decision on the protest.

Date ——————————————

(Signature) ——————————————

[50 FR 10037, Mar. 13, 1985, as amended at 51 FR 5332, Feb. 13, 1986]

501.707 Signatory authority.

When a determination and findings is required, it must be signed by the appropriate official in accordance with Table 501-1 of this regulation. The Federal Acquisition Regulation frequently refers to determinations being made by the agency head. Section 309 of the Federal Property and Administrative Services Act defines agency head and provides that at the option of the Administrator of GSA, the term may include the chief official of any principal organizational unit of the General Services Administration. The Administrator has authorized the heads of contracting activities to act as agency head to facilitate the procurement of property and services under Title III of the Federal Property and Administrative Services Act. (See GSA Delegation of Authority Manual ADM P 5450.39c.) When the applicable statute precludes redelegation of the authority the table provides for the Administrator to sign such D&F's.

TABLE 501-1—SIGNATORY AUTHORITY

D&F Requirement	Signatory authority
a. Determinations as to estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contract. (See 41 U.S.C. 254(b) and FAR 16.306).	Individual D&F's may be signed by the head of the contracting activity, as defined in GSAR 502.1, or a designee. Class D&F's must be signed by the head of the contracting activity.
b. Determinations that the use of a cost, cost-plus-a-fixed-fee contract or an incentive contract is likely to cost less than other methods, or that it is impractical to secure property or services of the kind and quality required without using one of these types of contracts. (See 41 U.S.C. 254(b) and FAR 16.301-3, 16.302, 16.303, 16.304, 16.305, 16.403, and 16.404.)	Individual D&F's may be signed by the head of the contracting activity or a designee. Class D&F's must be signed by the head of the contracting activity.
c. Determinations to use a time-and-material or labor-hour contract. (See FAR 16.601 and 16.602.)	Individual D&F's must be signed by the contracting officer. Class D&F's must be signed by the head of the contracting activity.
d. Determinations to use a letter contract. (See FAR 16.603-3.)	Individual D&F's may be signed by the head of the contracting activity or a designee.
e. Determinations to exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for supplies or services. (See 41 U.S.C. 253(b)(1) and FAR 6.202.)	Individual D&F's must be signed by the head of the contracting activity. Class D&F's are not permitted.
f. Determinations that it is not in the public interest to use full and open competition. (See 41 U.S.C. 253(c)(7) and FAR 6.302-7.)	Individual D&F's must be signed by the Administrator. This authority may not be redelegated. Class D&F's are not permitted.
g. Determinations that the making of advance payments would be in the public interest. (See 41 U.S.C. 255(c) and FAR 32.410.).	D&F's must be signed by the head of the contracting activity. Class D&F's are not permitted.
h. Determinations with respect to waiving the requirement for submission of cost or pricing data and the certification thereof. (See FAR 15.804-3(i).)	Individual D&F's must be signed by the head of the contracting activity. Class D&F's are not permitted.
i. Determinations with respect to waiving the requirement for the inclusion of the clauses required by FAR 52.215-22 through 52.215-25 in contracts with foreign governments or agencies thereof. (See FAR 15.804-3(i).)	Individual D&F's may be signed by the head of the contracting activity or a designee.
j. Determinations to omit the clause specified at FAR 52.215-1, Examination of Records by Comptroller General, from contracts with foreign contractors or subcontractors. (See 41 U.S.C. 254(c) and FAR 15.106-(b).).	Individual D&F's must be signed by the Administrator with the concurrence of the Comptroller General or a designee.
k. Determinations regarding the exceptions to the restrictions of the Buy American Act. (See FAR Subparts 25.1 and 25.2).	Individual D&F's may be signed by the head of the contracting activity or a designee.
l. Determinations under the Balance of Payments program. (See FAR Subpart 25.3.).	Individual D&F's may be signed by the head of the contracting activity or a designee.

TABLE 501-1—SIGNATORY AUTHORITY—Continued

D&F Requirement	Signatory authority
m. Determinations under Section 302(b)(2) of the Trade Agreements Act. (See FAR Subpart 25.4 and GSAR Subpart 525.4.)	Individual D&F's must be signed by the head of the contracting activity in accordance with GSAR 525.402-71.
n. Determinations to proceed with an award or to continue contract performance pending a GAO decision on a protest. (See FAR 33.104 (b)(c).)	Individual D&F's must be signed by the head of the contracting activity. Class D&F's are not permitted.

[50 FR 10037, Mar. 13, 1985, as amended at 50 FR 36081, Sept. 5, 1985; 51 FR 5332, Feb. 13, 1986]

501.770 Determinations and findings required.

The following determinations in connection with contracts are required to be made in writing supported by written findings. This is not an all inclusive listing. It lists the most commonly required D&F's.

(a) The determination required by section 304(b) of the Federal Property and Administrative Services Act (referred to in this section as "the act") (41 U.S.C. 254(b)) as to estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contract. (See FAR 16.306).

(b) The determination required by section 304(b) of the act that the use of a cost, a cost-plus-a-fixed-fee contract, or an incentive contract is likely to be less costly than other methods or that it is impractical to secure property or services of the kind or quality required without the use of a cost, cost-plus-a-fixed-fee contract, or an incentive contract. (See FAR 16.301-3, 16.302, 16.303, 16.304, 16.305, 16.403, and 16.404).

(c) The determination to use a time-and-material or labor-hour contract. (See FAR 16.601 and 16.602).

(d) The determination to use a letter contract. (See FAR 16.603-3).

(e) The determination required by section 303(b)(1) of the act (41 U.S.C. 253(b)(1)) to exclude a particular source from a contract action in order to establish or maintain an alternate source or sources for supplies or services. (See FAR 6.202).

(f) The determination required by section 303(c)(7) of the act (41 U.S.C. 253(c)(7)) that it is not in the public interest to use full and open competition. (See FAR 6.302-7).

(g) The determination required by section 305(c) of the act (41 U.S.C. 255(c)) that the making of advance payments would be in the public interest. (See FAR 32.410).

(h) The determination required with respect to waiving a requirement for the submission of cost or pricing data and the certification thereof (see FAR 15.804-3(i)) and for the inclusion of the clauses required by FAR 52.215-22 through 52.215-25 in contracts with foreign governments or agencies thereof.

(i) The determination required by section 304(c) of the act (41 U.S.C. 254(c)) with respect to omitting the clause specified in FAR 52.215-1, Examination of Records by Comptroller General, from contracts with foreign contractors or subcontractors regarding the rights of the Comptroller General of the United States to examine the contractor's records when it is determined (1) that the omission will serve the best interests of the United States, or (2) that the public interest will be served by the omission. (See FAR 15.106-1 and 25.904).

(j) Exceptions to the restrictions of the Buy American Act (41 U.S.C. 10(a-d)), determinations under the Balance of Payments program, and waivers under section 302(b)(2) of the Trade Agreements Act. (See FAR subparts 25.1, 25.2, 25.3 and 25.4).

(k) The determinations required to proceed with an award or to continue contract performance pending a GAO decision on a protest. (See FAR 33.104 (b) and (c) and GSAR 533.104 (b) and (c).)

[50 FR 10037, Mar. 13, 1985, as amended at 51 FR 5332, Feb. 13, 1986]

PART 502—DEFINITION OF WORDS AND TERMS

Sec.
502.000 Scope of part.

Subpart 502.1—Definitions

502.101 Definitions.

AUTHORITY: 40 U.S.C. 486(c).

502.000 Scope of part.

This part defines words and terms commonly used throughout this regulation. Other terms are defined in the part or subpart with which they are particularly associated.

[50 FR 10039, Mar. 13, 1985]

502.101 Definitions.

"Head of the contracting activity" (HCA) means the Associate Administrator for Acquisition Policy, Commissioners of the Federal Supply Service (FSS), Information Resources Management Service (IRMS), Public Buildings Service (PBS), Federal Property Resources Service (FPRS), or Regional Administrators (Regions 1, 2, 3, 4, 5, 6, 7, 9, and the National Capital Region). The Regional Administrator, Region 1, serves as the HCA only for FPRS activities. The Associate Administrator for Acquisition Policy serves as the HCA for Central Office contracting activities outside of FSS, IRMS, PBS, and FPRS.

"Contracting director" means directors of Central Office or regional office divisions that are responsible for performing contracting and/or contract administration functions except for FSS. "Contracting director" means directors of Commodity Centers and Federal Supply Service Bureaus in the FSS.

"Senior procurement executive" means the Associate Administrator for Acquisition Policy.

"Agency competition advocate" means the Director of the Office of Acquisition Management and Contract Clearance.

"Contracting activity competition advocate" means the (a) Director of Acquisition Management and Contract Clearance, (b) FSS Competition Advocate, Office of Commodity Management, (c) Director, Agency Liaison Officer Program Division, IRMS, (d) Special Assistant to the Director, Program Support Office, FPRS, (e) Regional Director, Office of Project Control and Oversight for Regions 2, 3, 4, 5, 6, 7, 9, and the National Capital Region, and (f) Senior Advisor to the Regional Administrator, Region 1 (only with respect to FPRS activities). The Director of Acquisition Management and Contract Clearance serves as the contracting activity competition advocate for Central Office contracting activities outside of FSS, IRMS, and FPRS.

[51 FR 39861, Nov. 3, 1986]

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 503.1—Safeguards

Sec.
503.101-3 Agency regulations.

Subpart 503.2—Contractor Gratuities to Government Personnel

503.203 Reporting suspected violations of the gratuities clause.
503.204 Treatment of violations.

Subpart 503.3—Report of Suspected Antitrust Violations

503.303 Reporting suspected antitrust violations.

Subpart 503.4—Contingent Fees

503.408 Evaluation of the SF 119.
503.408-1 Responsibilities.
503.409 Misrepresentations or violations of the covenant against contingent fees.

Subpart 503.5—Other Improper Business Practices

503.502 Subcontractor kickbacks.
503.570 Advertising of awards.

Subpart 503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

503.602 Exceptions.
503.603 Responsibilities of the contracting officer.

Sec.

Subpart 503.7—Voiding and Rescinding Contracts

503.700 Scope of subpart.
503.702 Definitions.
503.703 Authority.
503.705 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10802, Mar. 22, 1984, unless otherwise noted.

Subpart 503.1—Safeguards

503.101-3 Agency regulations.

(a) GSA Standards of Conduct are issued as 41 CFR Part 105-735 of the General Services Administration Property Management Regulations (GSPMR), ADM 7900.9. The agency authorized exceptions to FAR 3.101-2 are outlined in 503.101-2 and in 41 CFR 105-735.202(e) of the GSPMR. The procedures for enforcement of the standards are outlined in 41 CFR 105-735.101 of the GSPMR.

(b) The requirements for employee financial disclosure and restrictions on private employment for former Government employees are contained in the GSA Standards of Conduct. See 41 CFR 105-735.4 and 105-735.6 of the GSPMR.

Subpart 503.2—Contractor Gratuities to Government Personnel

503.203 Reporting suspected violations of the Gratuities clause.

It is the obligation of GSA employees to report immediately any apparent or suspected violation of the Gratuities clause in connection with any operation of GSA. The report shall be made to the contracting officer and to the Assistant Inspector General for Investigations in the Central Office or to the Regional Inspector General for Investigation. GSA employees shall also report suspected violations of the Gratuities clause to the Deputy Standards of Conduct Counselor in accordance with 105-735.202(e)(4) of the GSPMR. The report shall outline the events, acts, or conditions which indicate the Gratuities clause has been violated and shall include all pertinent documents, if any. The Office of Inspector General (OIG), shall conduct such investigation as is deemed necessary and, if appropriate, forward a report and recommendation, together with all pertinent documentation, to the Department of Justice and/or the Office of Acquisition Policy.

503.204 Treatment of violations.

The Assistant Administrator for Acquisition Policy shall act as the Administrator's designee and be responsible for determining whether the contractor offered or gave a gratuity and intended by the gratuity to obtain a contract or favorable treatment under a contract.

Subpart 503.3—Reports of Suspected Antitrust Violations

503.303 Reporting suspected antitrust violations.

(a) When contracting officers become aware of circumstances that may indicate violations of antitrust laws, they shall report the circumstances to the Assistant Inspector General for Investigation in the Central Office or to the Regional Inspector General for Investigations. The Office of Inspector General (OIG), shall conduct such investigation as may be necessary and prepare formal documents and statements for submission to the Department of Justice and/or the Office of Acquisition Policy for suspension or debarment consideration.

(b) If the Inspector General finds that violations of antitrust laws may have been committed, the Inspector General will refer the matter to the Department of Justice, in accordance with section 4(d) of the Inspector General Act of 1978, 5 U.S.C. Appendix, and notify the General Counsel, when appropriate, of the referral.

Subpart 503.4—Contingent Fees

503.408 Evaluation of the SF 119.

503.408-1 Responsibilities.

Upon receipt of Standard Form 119, Statement of Contingent or Other Fees, the contracting officer shall obtain advice of legal counsel as to the legality and general propriety of the relationship disclosed thereon. Also, the contracting officer may request the Assistant Inspector General for Investigation in the Central Office or the Regional Inspector General for Investigation to develop further information if the facts available are deemed insufficient for a proper decision. After careful review and evaluation of all the information obtained, the contracting officer shall render a decision in writing which shall be made a part of the contract file.

503.409 Misrepresentations or violations of the covenant against contingent fees.

(a) The name of successful offerors who fail or refuse to furnish the representation and agreement after opportunity therefor has been afforded, shall be submitted, with a statement of the pertinent circumstances, to the Assistant Inspector General for Investigation in the Central Office or the Regional Inspector General for Investigation for such further action as may be appropriate.

(b) The names of offerors who fail or refuse to furnish a complete Standard Form 119 (or a statement in lieu thereof as provided in FAR 3.405) shall be submitted, together with pertinent information, to the Assistant Inspector General for Investigation in the Central Office or the Regional Inspector General for Investigation for appropriate action. If the contract has been awarded, consideration shall be given to the feasibility of terminating the contract. If the contract has been awarded the eligibility of the offeror should be questioned.

(c) If an award has been made, any action to enforce the terms of the covenant shall be taken only upon the recommendation of legal counsel. Whether or not an award has been made, a suspected misrepresentation or anticipatory violation of the covenant against contingent fees shall be reported to the Assistant Inspector General for Investigation in the Central Office or the Regional Inspector General for Investigation.

Subpart 503.5—Other Improper Business Practices

503.502 Subcontractor kickbacks.

(a) When contracting officers become aware of circumstances that may indicate violations of the Anti-Kickback Act, they shall report the circumstances to the Assistant Inspector General for Investigation in the Central Office or to the Regional Inspector General for Investigation.

(b) If the Inspector General finds that violations of the Anti-Kickback law may have been committed, the Inspector General will refer the matter to the Department of Justice, in accordance with section 4(d) of the Inspector General Act of 1978, 5 U.S.C. Appendix and notify the General Counsel, when appropriate, of the referral.

503.570 Advertising of award.

The contracting officer shall insert the clause at 552.203-1, Advertising of Award, in solicitations and contracts for supplies and services when the contract amount is expected to exceed the small purchase limitation.

Subpart 503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

503.602 Exceptions.

Offers submitted by Government employees on solicitations issued pursuant to the Office of Management and Budget (OBM) Circular A-76 may be considered provided the contracting officer has complied with the requirements outlined in 503.603 before making an award. Normally when Government employees bid on A-76 solicitations, they do so with the knowledge that if the contract is awarded, their Government employment will be terminated. They are merely competing for the right to continue to provide a service to GSA. While they are Government employees at the time the bid is submitted, they will not be Government employees during the performance period. The implementation of OMB Circular

A-76 presents a unique situation which may be considered to be an authorized exception to the policy in FAR 3.601. Contracts between the Government and its employees are not expressly prohibited by statute except, where the employee acts for both the Government and the contractor in a particular transaction or where the service to be rendered is such as could be required of the contractor in his/her capacity as a Government employee, 18 U.S.C. 208 (1976); Hugh Moher B-187841, March 31, 1977, 77-1 CPD 204.

503.603 Responsibilities of the contracting officer.

Before awarding a contract to a GSA employee who responded to an A-76 solicitation, the contracting officer shall:

(a) Obtain a written certification from the employee's supervisor that: The individual was not involved in the development of the solicitation or specifications, or in the preparation of the independent Government cost estimate or in-house cost comparison; had no advance knowledge of the details of the contents of the solicitation package; and was not otherwise involved in the contracting process.

(b) Refer the proposed award to the appropriate Assistant General Counsel for review and approval.

(c) Ascertain whether a reduction in force notice has been issued to the employee.

Subpart 503.7—Voiding and Rescinding Contracts

SOURCE: 52 FR 5982, Feb. 27, 1987, unless otherwise noted.

503.700 Scope of subpart.

This subpart implements and supplements FAR Subpart 3.7 with respect to the voiding and rescinding of a contract where there has been a final conviction of the contractor for bribery, conflict of interest, or similar misconduct directly related to the award of the contract. The remedy available herein is in addition to the common law right of avoidance, rescission, or cancellation.

503.702 Definitions.

"Fact-finding official" means the Chairman of the General Services Administration Board of Contract Appeals or a designee.

"Notice" means a written communication sent by certified mail, return receipt requested, to the last known address of a party, its identified counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt will then be presumed.

"Voiding and rescinding official" means the Associate Administrator for Acquisition Policy or a designee.

503.703 Authority.

Where a contract has been awarded as a result of fraud, bribery, conflict of interest, or similar misconduct, the contracting officer should consult with counsel to determine if the Government has a common law remedy such as avoidance, rescission, or cancellation. As an alternative, the matter may be referred to the voiding and rescinding official, after consultation with counsel, for processing under the procedures set forth in FAR Subpart 3.7 and Subpart 503.7 where there has been a final conviction of a contractor for any violation of 18 U.S.C. 201-224.

503.705 Procedures.

(a) *Reporting.* (1) As an alternative to exercising the Government's common law right of avoidance, rescission, or cancellation of contracts awarded as a result of bribery, conflict of interest, or similar misconduct, the contracting officer may elect to postpone a decision to void, rescind, or cancel a contract pending a final conviction of the contractor for the particular offense. Upon conviction, the contracting officer may exercise the Government's common law rights, if appropriate, or refer the matter to the voiding and rescinding official through appropriate channels with a recommendation that the contract be declared void and rescinded.

(2) The referral should include the same information provided for in

509.406-3(a)(2) (i) through (vi). Additionally, the referral should include the information required to prepare the notice of proposed action in accordance with FAR 3.705(d).

(3) Since a final conviction for any violation of 18 U.S.C. 201 is a cause for debarment under FAR 9.406-2(a)(1) and/or (3), the Office of Inspector General (OIG) may be preparing a debarment referral. Therefore, in order to minimize duplication of effort, the contracting officer is encouraged to coordinate its referral with the OIG and ascertain if a debarment referral is contemplated.

(b) *Notice of proposal to declare void and rescind contracts pursuant to FAR Subpart 3.7 and GSAR 503.7.* (1) The voiding and rescinding official shall review the adequacy of the referral and coordinate the matter with assigned legal counsel and the respective contracting activity.

(2) Where a determination is made to declare void and rescind a contract and to recover the amounts expended and the property transferred, written notice by the voiding and rescinding official must be given to the contractor in accordance with FAR 3.705(c). The notice must include the information in FAR 3.705(d).

(3) A copy of the notice will be given to the contracting activity affected.

(c) *Decision-making process.* Where notice of the proposed action to declare void and rescind a contract is issued under FAR Subpart 3.7 and Subpart 503.7, the process to be followed by the voiding and rescinding official and the rights afforded to the contractor are virtually the same as those provided for in 509.406-3(c) except for the following changes:

(1) Where the term "debarring" is used, substitute "action to declare void and rescind a contract."

(2) Where the phrase "debarment notice" is used, substitute "notice of the proposed action to declare void and rescind a contract."

(3) Where the phrase "debarring official" is used, substitute "voiding and rescinding official."

(4) The first sentence in 509.406-3(c)(3) is not applicable and the following sentence is substituted: "Where the contractor disputes facts relating to the proposed action, other than the validity of the conviction, it may request, a formal fact-finding hearing before the agency fact-finding official."

(5) In 509.406-3(c)(4), only (i) and (ii) are applicable.

(6) In 509.406-3(c)(5), substitute the phrase, "FAR Subpart 3.7 and Subpart 503.7" for the phrase, "FAR Subpart 9.4 and GSAR 509.4."

(d) *Voiding and rescinding official's final decision.* (1) The voiding and rescinding official's final decision must be made, in writing, and notice of the decision given in accordance with the requirements of FAR 3.705(e). The final decision shall be coordinated with the respective contracting activity.

(2) A copy of the final decision will be given to the contracting activity affected.

PART 504—ADMINISTRATIVE MATTERS

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504.7002 Procurement contract register.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10803, Mar. 22, 1984, unless otherwise noted.

Subpart 504.1—Contract Execution

504.101 Contracting officers signature.

504.103 Contract clause.

Agency procedures do not require the use of the clause at FAR 52.204-1, Approval of Contract, in solicitations and contracts.

[49 FR 40578, Oct. 17, 1984]

Subpart 504.2—Contract Distribution

504.201 Procedures.

The contract distribution procedures in FAR 4.201 are supplemented to provide that when a "Duplicate Original" of the contract or modification is forwarded to the paying office it shall be certified as a true copy by the contracting officer on the award or modification form (i.e., SF 26, 33, 1442 etc.). The contracting officers original handwritten signature, in ink, must be placed on the award form certifying the copy as a "true copy". This requirement does not apply to:

(a) Leases of real property;

(b) Schedule contracts, or

(c) Standard or GSA multipage purchase/delivery order carbon forms.

[49 FR 40578, Oct. 17, 1984]

Subpart 504.4—Safeguarding Classified Information Within Industry

504.402 General.

(a) This subpart prescribes procedures for safeguarding classified information required to be disclosed to contractors in connection with the solicitation of bids and offers, and the award, performance, and termination of contracts. As used in this subpart, the term "contractor(s)" includes prospective contractors, contractors, subcontractors, vendors, and suppliers of any tier.

(b) The provisions of this subpart implement the requirements of the Department of Defense Industrial Security Regulations and the Department of Defense Industrial Security Manual for Safeguarding Classified Information. By agreement, the Department of Defense will act for and in behalf of General Services Administration (GSA) in rendering security services required for safeguarding classified information released by GSA to United States (U.S.) industry.

(c) As used in this subpart, the term "U.S. industry" pertains to those industries (including educational and research institutions) located within the United States, its possessions, and the Commonwealth of Puerto Rico.

504.470 Requests for release of classified information.

Prior to entering into discussion, negotiation, or solicitation of bids for contracts involving the disclosure of classified information, the contracting officer shall prepare, in triplicate, section I of GSA Form 1720, Request for Release of Classified Information to U.S. Industry (illustrated in 553.2). After signing as requesting officer and obtaining approval from his/her immediate supervisor, the contracting officer shall forward all copies to the Office of Internal Security (ATOI), Office of Oversight.

504.470-1 Authorization for release.

ATOI, after determining that the contractor has been issued a Department of Defense facility security clearance, will complete the appropriate parts of section II, of GSA Form 1720, and return the original and one copy to the contracting officer. Under no circumstances will classified information be disclosed or made accessible to any contractor until the completed form has been received from ATOI. Where only Item 14b, section II, of the form has been checked, the contracting officer will be guided in his/her actions by the instructions on the reverse side of the form. In the event that a contractor is found to be ineligible for a security clearance, ATOI shall advise the contracting officer.

504.470-2 Termination of authorization for release.

When it develops that a clearance should be withdrawn or revoked, ATOI will advise the contracting officer of the termination of authorization to release classified information. This will include instructions concerning actions required to safeguard, withhold, or obtain the return of classified information. Reasons for such termination may include:

(a) Failure of the contractor to maintain the physical standards required by the Industrial Security Manual for Safeguarding Classified Information.

(b) Information indicating the contractor should no longer be eligible for clearance.

(c) The contractor no longer requires access to classified information.

504.471 Processing security requirements checklist (DD Form 254).

(a) Contracts involving access to classified information by the contractor require preparation of DD Form 254, Contract Security Classification specification (illustrated in FAR 53.303-DD-254), to identify and indicate to Department of Defense (DOD) and contractors the areas of classified information involved. In the case of contracts for research, consultant services, graphic arts services, or other procurements of services, written notice of classification may be used in lieu thereof.

(b) Below are instructions for completing each item on the DD Form 254. The GSA contracting officer is responsible only for the preparation of DD Forms 254 that are issued to the prime contractor. Those issued to subcontractors are the responsibility of the prime contractor. Since GSA has the review and distribution responsibility for DD Forms 254 that are issued to subcontractors, instructions for completing those items on the DD Form 254 as they apply to subcontractors are also included. Each item of the DD Form 254 is to be completed; N/A should be shown for items that are not applicable.

(1) *Item 1:* Enter the appropriate clearance: Top Secret, Secret, or Confidential.

(2) *Item 2:* Check item 2a, 2b, 2c, as applicable.

(3) *Item 3:* Enter the complete identifying number and the completion date in 3a or 3b. If item 3c is used, enter the appropriate data identifying the type of solicitation (i.e., Request for Proposal (RFP), Request for Quotation (RFQ), or Invitation for Bid (IFB)).

(4) *Item 4:* Furnish date in block 4a, 4b, or 4c, as applicable.

(5) *Item 5:* Check Item 5a, 5b, or 5c, as applicable and insert the date of the specification. If item 5b or 5c is checked also, enter the date for item 5a.

(6) *Item 6:* If the DD Form 254 is not for a follow-on contract, annotate block "Does Not Apply." If the DD Form 254 is for a follow-on contract, enter the preceding contract identification number from which this contract evolved and indicate whether accountability for classified material on the preceding contract is or is not transferred to the follow-on contract.

(7) *Item 7:* If there is a prime contract, complete items 7a and 7b, and 7c showing the complete name and address of the prime contractor's facility that will receive classified information in the performance of the prime contract identified in item 3a along with the responsible security office of that facility. If there is no prime contract and item 3c is completed, enter instead

in items 7a and 7b the name and address of the contractor's facility to which the DD Form 254 is to be sent in connection with the RFP, RFQ, or IFB, or GSA program as described in GSAR 553.401, and the responsible security office of that facility. The identity of the responsible security office is obtainable from Section II of the GSA Form 1720.

(8) *Item 8:* If there is a first tier subcontract, complete items 8a and 8b showing the complete name and address of the subcontractor's facility that will receive classified information in performance of the subcontract listed in item 3b. If there is no first tier subcontract and item 3c is completed, enter instead the name and address of the subcontractor's facility to which the DD Form 254 is to be sent in connection with RFP, RFQ, IFB, and the responsible security office of that facility.

(9) *Item 9:* List in the proper order of succession beginning with the second tier, the subcontract's identification number and the complete name and address of the subcontractor of each successive tier, down to and including the subcontractor's facility for which the DD Form 254 is being provided, and the responsible security office of such last facility. If item 3c is completed, the last entry should be the name and address of the subcontractor's facility to which the particular DD Form 254 is to be sent in connection with the RFP, RFQ, or IFB, and the responsible security office of such facility.

(10) *Item 10:* Under item 10a, include a brief unclassified statement or notation of sufficient information to identify the nature of the procurement or program. If an unclassified notation cannot be made, enter the word "classified." Usually, item 10c is checked "no." If a case arises where the contracting officer believes item 10c should be checked "yes," the Director, Office of Internal Security should be contacted for further guidance. Under item 10d, check "yes" or "no". If necessary, identify the specific areas or elements of the contract which are outside the inspection responsibility of the cognizant security office in item 15.

(11) *Item 11:* Check the appropriate box for each item listed. Use the "Remarks" column to elaborate as necessary. When either the RESTRICTED Data, Cryptographic Information, or Communication Analysis Information block is checked "yes," identify the applicable classification guide(s) pertinent to the contract or attach them to the DD Form 254. If these extracts are classified, forward them by separate correspondence. If it is necessary to check "yes" to the Defense Documentation Center of Defense Information Analysis Center services, coordinate with the GSA Office of Internal Security (ATOI), Office of Oversight.

(12) *Item 12:* Enter the name, address, telephone number, and office symbol of the GSA official to whom inquiries pertaining to classification guidance determinations or interpretations for the subcontract are to be directed. (This item must be completed even if the official is the same as the official identified in item 16(e).) In first tier subcontracting situations, show the name, address, and telephone number of the responsible official in the facility of the prime contractor listed in item 7a. In subcontracting situations beyond the first tier, show the name, address, and telephone number of the responsible official in the subcontractor's facility listed in item 3b or item 8, as appropriate to whom inquiries pertaining to classification guidance determinations or interpretations for the subcontract are to be directed.

(13) *Item 13:* Strike through "Direct" and "Through" boxes and enter "To: Director, Office of Internal Security (ATOI), General Services Administration Washington, DC 20405."

(c) In addition to the distribution set forth on the DD Form 254, the GSA Office of Internal Security (ATOI), Office of Oversight shall receive two copies.

[49 FR 10803, Mar. 22, 1984, as amended at 49 FR 40578, Oct. 17, 1984]

504.472 Periodic reviews.

Contracting officers shall review DD Form 254 whenever a change in the phase of performance occurs or at their own discretion, but in any event at least once a year, to determine whether the classified information can be downgraded or declassified. The contractor shall be informed of the results of the review by issuance of a revised specification, or by written instructions in lieu of DD Form 254 (where authorized), or if the review results in no change in the classification specifications, by written notification to that effect. Upon termination or completion of the contract, a final checklist shall be prepared.

504.473 Recurring procurement.

When procurement is of a recurring nature, a new DD Form 254 is not required if the end item is not changed and there is no change from the previous security classification.

504.474 Control of classified information.

(a) Classified information shall be transmitted to the contractor in the manner required by the HB, Information Security, Chapter 1-7 (ADM P 1025.2B).

(b) Classified information shall be addressed and delivered to the contractor so that it may be secured and recorded at the control stations established at the contractor's facility in accordance with the requirements of the Industrial Security Manual for Safeguarding Classified Information. Classified material may be delivered or made available to an employee of the contractor if the employee has security clearance for access to classified information at the required level and the contractor has given GSA advance written notification of the name (in full) of the employee, his official position, and his current clearance status.

(c) The "need to know" principle must be enforced at all times. "Need to know" means that the knowledge or the possession of classified material is permitted only to persons whose official duties require such access in the interests of promoting national security. The contracting officer is responsible for determining who is permitted access to classified material.

(d) When classified information is originated by another agency, the consent of the originating agency shall be obtained prior to releasing the classified information to the contractor.

504.474-1 Records.

Contracting officers shall ensure that a record is maintained of classified information released to contractors.

504.474-2 Markings.

Classified material furnished to a contractor shall be marked in accordance with the provisions of the HB, Information Security, Chapter 1-4 (ADM P 1025.2B).

504.475 Return of classified information to GSA.

Unless the classified information has been destroyed as provided in paragraph 19 of the Industrial Security Manual for Safeguarding Classified Information, the contracting officer shall obtain the return of this information. Where classified information is furnished to a GSA contractor by another Government agency, the return of such information is the responsibility of that agency.

504.475-1 Return from prospective contractors.

When a bid or proposal is not submitted, any classified information furnished shall be required to be returned prior to or immediately after the time set for bid opening or the closing date for receipt of proposals. For unsuccessful bidders or offerors, any classified information shall be required to be returned within 15 days after contracts have been awarded.

504.475-2 Return from contractors.

All classified information furnished a contractor shall be required to be returned at the termination or completion of the contract or when otherwise directed by the contracting officer.

504.475-3 Termination, revocation, or inactivation of facility security clearance.

(a) When a contracting officer has been advised by the GSA Office of Internal Security that authorization to release classified information has been withdrawn, or by the responsible security officer that the facility's security clearances have been revoked or inactivated, immediate action shall be taken to obtain the return of classified information.

(b) If the contracting officer is advised that a facility does not have adequate means for safeguarding classified information in its possession, additional classified information shall not be furnished. Any classified information previously furnished shall be required to be returned as in (a), above, until the facility meets the standards required by the Industrial Security Manual for Safeguarding Classified Information.

504.476 Breaches of security.

When an unauthorized disclosure of classified information is discovered, the GSA contracting officer or other GSA employee responsible for the information shall promptly refer the facts of such breach or compromise to the GSA Office of Internal Security for appropriate remedial action.

Subpart 504.6—Contract Reporting

504.601 Federal Procurement Data System.

GSA guidance, procedures, and instructions on reporting procurements to the Federal Procurement Data System are contained in the GSA Procurement Management Information Reporting System Manual (ADM P 2800.16).

504.670 [Reserved]

504.671 Reporting taxpayer identification numbers.

(a) *General.* Contracting officers shall obtain and report contractors' taxpayers identification numbers (TIN) to the Office of Finance. The Office of Finance in turn will record and report this information on Internal Revenue Service Form NEC 1099 in compliance with IRS directives regarding the reporting of income.

(b) *Procedures.* (1) This procedure pertains only to contractors who are not incorporated and who receive payments from GSA for performing services totaling $600 or more in any calendar year. If the contracting officer anticipates that payment to the contractor will equal or exceed the $600 amount for the year, he shall report the TIN.

(2) Contracting officers shall obtain and report contractor's TIN to their designated Office of Finance.

(3) The TIN is either the employer identification number or social security number.

(4) Contracting officers shall make the request for the TIN a part of the solicitation. A copy of the contract (containing the TIN) shall be forwarded to the Office of Finance for payment.

(5) The TIN shall also appear on the face of any orders placed against a contract, copies of which are forwarded to the Office of Finance for payment.

(6) If written solicitations/orders are not used, the TIN should appear on the invoice certified by an authorized Government official and forwarded to the Office of Finance for payment.

(7) When a prospective contractor fails to provide its TIN in an offer, it shall be handled as a minor informality. The contracting officer shall request that the prospective contractor cure the deficiency by providing the number. If the prospective contractor refuses, the contracting officer should inform the offeror that the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248), as amended by Pub. L. 98-67, requires that Government agencies reduce payments due to contractors, who fail or refuse to provide the TIN, by twenty percent. The twenty percent withheld must be transferred and reported to the Internal Revenue Service using the wage reporting process.

(8) If the prospective contractor persists in its refusal to supply the TIN, the award shall be made and the Office of Finance shall be notified accordingly.

[49 FR 10803, Mar. 22, 1984, as amended at 49 FR 40578, Oct. 17, 1984; 50 FR 36081, Sept. 5, 1985]

Subpart 504.8—Contract Files

504.800 Scope of subpart.

This subpart prescribes requirements for using a standard contract file format for all contracts, except leases of real property, that exceed the small purchase limitation. The application of this subpart to small purchases is optional.

[50 FR 26997, July 1, 1985]

504.802 Contract files.

(a) *Standardization of files.* Professionalism in acquisition dictates that contract files be complete and able to stand on their own. To achieve this goal and to facilitate processing and administration of contracts at all levels, contract files are to be organized in a standardized manner throughout the agency. Therefore, all contracts over $25,000 must be supported with an official contract file containing all necessary information and documentation in accordance with the requirements outlined in FAR 4.802 and 4.803. The documents shall be organized in accordance with the standard contract file format in GSAR 504.803.

(b) *Responsibility for contract files.* The contracting officer shall be responsible for the official file. All documents pertaining to the contract shall be forwarded by those initiating them to the contracting officer for inclusion in this file. The contracting officer is also responsible for the accountability of contract files transferred to the records center and for knowing the location of the files as provided by the National Archives and Records Administration.

(c) *Transfer of responsibility for contract files.* (1) When responsibility for a contract is transferred from one contracting officer to another, e.g., transfer of assignments or redelegation of contract administration (intraoffice or interoffice), the contracting officer transferring the files shall prepare a detailed listing by file number and/or name to identify the file(s) to be transferred.

(2) If available, duplicates of the files to be transferred must be retained by the contracting officer until acknowledgement of receipt of the transferred files by the contracting officer is received. However, duplicate files should not be created for the transfer.

(3) The original contracting officer transferring the files shall retain one copy of the listing and send a copy of the listing to the successor contracting officer under a separate mailing as advance notice of the files to be transferred.

(4) The files to be transferred to the successor contracting officer must be sent by certified mail, return receipt requested, when appropriate, or by another method so as to obtain a signature of the successor contracting officer for receipt of the contract files that are transferred. The transferred files must be accompanied by two copies of the listing to the successor contracting officer.

(5) The successor contracting officer, who becomes responsible for the files, shall sign one copy of the listing certifying that he/she has received the files listed and return the signed copy to the contracting officer that transmitted the files.

[50 FR 26997, July 1, 1985]

504.803 Contents of contract files.

(a) The items listed therein shall be placed in the contract file in reverse order; i.e., item (1) should be placed on the bottom of the file, item (2) on top of item (1), etc.

(1) Requisition or request for contractual action. Where technical or requirements personnel recommend the use of other than full and open competition, the certification of the accuracy and completeness of the data to support the recommendation should be filed under this tab. (See FAR 6.303-1(b).)

(2) Specifications, drawings, and other technical documents.

(3) Acquisition plan including, where applicable, the determination required by OMB Circular A-76 and/or concurrence of the cognizant competition advocate.

(4) Determination and findings required by FAR Subpart 1.7 and GSAR Subpart 501.7, or justification required by FAR 6.303, including the certification of accuracy and completeness of the justification.

(5) Department of Labor Wage Determination.

(6) Small business and labor surplus area determinations.

(7) Source list.

(8) Statement as to synopsis of proposed procurement under FAR Subpart 5.2 or other required advertisements.

(9) Presolicitation notice.

(10) IFB/RFP and amendments.

(11) Abstract of bids/proposals including identification of the low bidder/offeror, discounted price, etc.

(12) Cost or pricing data. Where the requirement for submission of cost or pricing data is waived, as provided in FAR 15.804-3, the waiver and documentation supporting the waiver should be filed under this tab.

(13) Field pricing report (see FAR 15.805-5 and GSAR 515.805-5). Where the requirement for a field pricing report of a price proposal is waived, as provided in FAR 15.805-5, the waiver and documentation supporting the waiver should be filed under this tab.

(14) Price or cost analysis report prepared under FAR 15.608. Supporting technical analyses, other than those supporting an audit report, should be filed under this tab. The profit or fee analysis required by FAR Subpart 15.9 should be made a part of the price or cost analysis report. In those cases where an independent Government estimate is prepared, it should also be made a part of the price or cost analysis report.

(15) A price negotiation memorandum, as required by FAR 15.808, must be written so as to permit reconstruction of all the major events of the acquisition and placed under this tab.

(16) Certificate of current cost or pricing data.

(17) Pre-award survey.

(18) EEO compliance review.

(19) "No bid" or "no proposal" correspondence.

(20) Unsuccessful bids or proposals. A copy of each rejected bid or each unacceptable proposal also must be included in the file under this tab.

(21) Mistakes in bids and protests. This includes all correspondence and determinations relating to mistakes in bids disclosed before award and/or protests.

(22) Actions taken on late bids or proposals.

(23) Contractual action. Successful bid or proposal and all pertinent correspondence applicable to the contractual action. Subcontracting plans that are incorporated in and made a material part of a contract, as required by FAR 19.705-5(a)(5), should be filed under this tab.

(24) Evidence of concurrence for legal sufficiency of the appropriate counsel (if applicable).

(25) Any required approvals—GSA Form 1535, Recommendation for Award (if applicable).

(26) GSA Form 2932, Proposed Substantial Contract Award (if applicable).

(27) Standard Form 99, Notice of Award of Contract, (if applicable).

(28) GSA Form 3439, GSA/FPDS Individual Contract Action Report or other FPDS reporting documentation.

(b) The contract file must be numerically tabbed as required by GSAR 504.803(a). Documents within the tab should be filed chronologically with the most recent document on top. If any of the documents are too voluminous to be placed under the applicable tab, they should be included in a separate file and the tab annotated with the location of the file. All of the items described will not always be needed for each contract action. Unneeded items, therefore, will be self deleting. If a tab is not required for a particular action, it should be omitted from that contract file.

(c) An index of the file tabs should be prepared and placed in the file. Items which do not apply should be so marked and if necessary, a brief explanation included. In order to facilitate the preparation of the index, each service/office may prepare a standard contract file checklist based on the requirements of GSAR 504.803(a) appropriate to that particular service/office. The requirements of a particular service/office may make appropriate the inclusion of sub-headings under a tab or, if deemed necessary, additional items.

[49 FR 10803, Mar. 22, 1984, as amended at 50 FR 10039, Mar. 13, 1985; 50 FR 26997, July 1, 1985; 53 FR 30842, Aug. 16, 1988]

504.804-5 Detailed procedures for closing out contract files.

When the statement required by FAR 4.804-5(b) is completed, the administrative contracting officer (ACO) shall forward the statement and the contract files to the cognizant procuring contracting officer (PCO). The ACO shall follow the procedures outlined in GSAR 504.802(c) when transferring the files to the PCO.

[50 FR 26998, July 1, 1985]

504.805 Disposal of contract files.

The contracting officer's accountability for contract files shall terminate at the end of their retention period when the notice of disposal is received from the National Archives and Records Administration, and disposal is approved by the appropriate records liaison officer whose organization has functional responsibility for the files.

[53 FR 30842, Aug. 16, 1988]

Subpart 504.70—Uniform Procurement Instrument Identification

504.7001 Uniform procurement instrument identification.

This section prescribes procedures for the identification of GSA contracts, orders, and other procurement instruments regardless of dollar threshold and applies to all GSA contracting activities except those within the Federal Supply Service.

[51 FR 16691, May 6, 1986]

504.7001-1 Policy.

(a) The uniform procurement instrument identification system shall be used for procurement instruments listed in paragraph (f) of GSAR 504.7001-2. The system does not apply to purchases made through certified invoice procedures (see GSAR 513.70) or to imprest fund purchases.

(b) Identification should be placed in the contract number block provided on the applicable forms. If a space is not reserved for the prescribed number, it should be placed in the upper right-hand corner of the form.

(c) Each contracting office shall maintain records to ensure continuity and control of procurement instrument identification numbers.

[49 FR 10803, Mar. 22, 1984, as amended at 49 FR 40579, Oct. 17, 1984; 51 FR 16691, May 6, 1986]

504.7001-2 Basic procurement instrument identification number.

The basic procurement instrument identification number will normally be assigned at the time of award. However, the number may be assigned at the time a procurement request is received if assignment at that time will facilitate tracking of the procurement. The basic procurement instrument identification number shall remain unchanged for the life of the particular instrument and shall consist of 14 alphanumeric characters as follows:

(a) The basic procurement instrument identification number shall use characters 1 and 2 for the symbol "GS."

(b) The third and fourth characters shall be assigned to the region preparing the instrument as follows.

00	Central Office
01	Region 1
02	Region 2
03	Region 3
04	Region 4
05	Region 5
06	Region 6
07	Region 7
08	Region 8
09	Region 9
10	Region 10
11	National Capital Region

(c) The fifth character shall be a capital letter assigned to the service/office preparing the instrument as follows:

B—Office of Comptroller
D—Federal Property Resources Services
F Federal Supply Service
G—Board of Contract Appeals
H Office of Associate Administrator for Administration
J—Office of Inspector General
K Information Resources Management Service
L—Office of General Counsel
P—Public Buildings Service

(d) The sixth and seventh characters shall be the last two digits of the fiscal year in which the number is assigned.

(e) The eight and ninth characters shall be an alpha or alpha/numeric code identifying the contracting office preparing the instrument. (These codes will be assigned to each GSA organization where a warranted contracting officer is assigned.) See Appendix A for code assignment.

(f) The tenth character shall be a capital letter assigned to indicate the type of procurement instrument code as follows:

A—Agreements, including basic agreements, basic ordering agreements, and blanket purchase agreements.
B—Reserved.
C—Contracts, including letter contracts, contracts referencing basic agreements, or basic ordering agreements, excluding indefinite delivery type contracts.
D—Indefinite delivery contracts, including definite quantity, requirements contracts and indefinite quantity contracts.
E—Sales contracts.
F—Outleases or subleases of real property.
G-K—Reserved.
L—Leases of real property.
M—Purchase orders (open market small purchases)—manual.
N—Reserved.
P—Purchase orders—(open market small purchases)—automated.
Q—Reserved.
R—Reserved.
S—Schedule contract.
T-Z—Reserved.

(g) The eleventh through fourteenth characters shall be the serial number of the instrument. A separate series of numbers, maintained at the contracting office level, may be used for each type of instrument listed in paragraph (f) of this 504.7001-2, depending upon procurement document volume. At the beginning of each fiscal year, these serial numbers shall commence with the number 0001. Alphanumeric characters shall be serially assigned, after all the numeric series are exhausted, i.e., 0001 through 9999, with an alpha as the first character, followed by three character numeric serial number. Each issuing office shall be responsible for the control of the serial number assignments. The following numeric and alphanumeric sequences, excluding alpha I and O, shall be used:

0001 through 9999,
A001 through A999, B001 through B999,
And so to Z001 through Z999.

(h) An example of this procurement instrument identification number is:

GS 02 P 84 PF L 0002

Positions	
1-2	The agency designation code
3-4	A two-digit code identifying the region or Central Office
5	A capital letter identifying the service/office.
6-7	The last two digits of the fiscal year.
8-9	A two-digit alpha code assigned to the concracting office.
10	A captial letter assigned to the type of instrument
11-14	The four digit serial number.

[49 FR 10803, Mar. 22, 1984, as amended at 49 FR 40579, Oct. 17, 1984; 51 FR 16691, May 6, 1986]

504.7001-3 Order and call instrument identification number.

Delivery orders under indefinite delivery contracts (orders), and orders under schedule contracts must be identified by an "11" character alphanumeric identification number placed in the order number block of the order form. The basic indefinite delivery or schedule contract number must be placed in the contract number block of the order form.

(a) The first character shall be a capital letter assigned to the service/office issuing the order. This code will be identical to those assigned in paragraph (c) of GSAR 504.7001-2.

(b) The second and third characters shall be assigned to the Region issuing the order. These identification codes will be identical to the codes assigned in paragraph (b) of 504.7001-2.

(c) The fourth and fifth characters shall be the last two digits of the fiscal year in which the number is assigned.

(d) The sixth and seventh characters shall be assigned to the contracting office preparing the order. These identification codes will be the same as the codes assigned in paragraph (e) of 504.7001-2.

(e) The eighth through the eleventh characters shall be the serial number of the order. Each contracting office shall maintain its own serial number. Alphanumeric numbers shall be used when more than 9999 numbers are required. Alphanumeric numbers shall be serially assigned with an alpha in the first position followed by the numeric serial number. The following sequences, excluding alpha I or O shall be used:

0001 through 9999.
A001 through A999.
And so on to Z001 through Z999.

(f) An example of a delivery order number is:

P 01 84 PB 0001

Position		
1	Service/office issuing the order.	P
2&3	Region issuing the order.	01
4&5	Fiscal year.	84
6&7	A two-digit code assigned to contracting office.	PB
8-11	Four digit serial number.	0001

[49 FR 10803, Mar. 22, 1984, as amended at 49 FR 40579, Oct. 17, 1984; 51 FR 16691, May 6, 1986]

504.7001-4 Supplemental procurement instrument identification number.

Modifications to the basic contract instrument and to call/order against contracts shall be numbered by use of a four character alphanumeric number. The supplemental identification numbering system shall apply to all modifications to contracts and to call/orders against contracts.

(a) The first character shall be a capital letter identifying the office issuing the modification, as indicated below:

A Contract administration office modification (Administrative Components), or
P Purchasing office modification.

(b) The second character shall be a capital letter identifying the type of action, as follows:

A—Administrative change.
C—Change order.
O—Other (includes exercise of options, price adjustments under escalation clauses and other changes made under specific contract clauses.)
S—Supplemental agreement (bilateral signatures).

(c) The third and fourth characters shall be the serial number. Alphanumeric numbers shall be used when more than 99 numbers are required. Alphanumeric numbers shall be serially assigned with an alpha in the first position followed by a numeric number. The following sequences, excluding alpha I and O, shall be used:

01 through 99, A1 through A9, and so on to Z1 through Z9.

(d) An example of the supplemental procurement instrument identification number is:

Example A S 0 1

Positions	
1	Identifying office A or P
2	Type action
3 and 4	The two-digit serial number

[49 FR 10803, Mar. 22, 1984, as amended at 49 FR 40580, Oct. 17, 1984]

504.7002 Procurement contract register.

GSA Form 2728, Procurement Contract Register, or an automated register shall be used to ensure continuity and control of procurement instrument identification numbers.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 505—PUBLICIZING CONTRACT ACTIONS

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505.000 Scope of part.
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Subpart 505.1—Dissemination of Information

505.101 Methods of disseminating information.

Subpart 505.2—Synopses of Proposed Contracts

505.201 General.
505.202 Exceptions.
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505.203 Publicizing and response time.
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505.207 Preparation and transmittal of synopses.
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Subpart 505.3—Synopses of Contract Awards

505.301 General.
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Subpart 505.4—Release of Information

505.403 Requests from Members of Congress.

Subpart 505.5—Paid Advertisements

505.502 Authority.
505.503 Procedures.
505.504 Use of advertising agencies.

AUTHORITY: 40 U.S.C. 486(c).

505.000 Scope of part.

This part prescribes policies and procedures for publicizing contract opportunities and award information.

[49 FR 10809, Mar. 22, 1984]

505.001 Policy.

In addition to the publicizing requirements of FAR 5.002, sources sought synopsis may be publicized when appropriate for the purpose of locating potential sources.

[50 FR 10040, Mar. 13, 1985]

Subpart 505.1—Dissemination of Information

505.101 Methods of disseminating information.

(a) Contracting offices may post the notice required by FAR 5.101(a)(2) at the Business Service Center (BSC) when located in the same geographic area as the BSC. Unless there is an unusual and compelling need for the supplies or services being procured, the closing date established for receipt of offers must be after the 10 day period for posting the information required by FAR 5.207 (c) and (f) or the solicitation.

(b) The appropriate Business Service Center shall be furnished a copy of solicitation documents (except solicitations for leases of real property) when the estimated contract amount is expected to exceed the small purchase limitation. The Business Service Centers shall display the solicitation documents so they are readily available and accessible for public examination.

(c) Proposed acquisitions of leasehold interests in real property involving blocks of space of 10,000 or more square feet shall be publicized in local newspapers and/or periodicals unless exempt under FAR 5.202 or 505.202. Proposed leases of less than 10,000 square feet may be publicized in local newspapers and/or periodicals when the contracting officer determines such advertising will serve to promote competition.

(d) Proposed acquisitions of real property appraisal services, estimated to cost $10,000 or more, shall be publicized in local newspapers, unless exempt under FAR 5.202 or 505.202.

[52 FR 22655, June 15, 1987]

Subpart 505.2—Synopses of Proposed Contracts

505.201 General.

All synopsis messages for proposed procurements may be forwarded directly to the *Commerce Business Daily*

best copy available

with an information copy to the appropriate Business Service Center (BSC). Contracting offices shall ensure that internal procedures for forwarding messages to the *Commerce Business Daily* comply with FAR 5.203, Publicizing and response time. Submission to the Commerce Department must be in accordance with FAR 5.207.

[52 FR 22655, June 15, 1987]

505.202 Exceptions.

(a) The Administrator has determined in accordance with section 18(c)(3) of the Office of Federal Procurement Policy Act, that the Commerce Business Daily (CBD) is not the appropriate vehicle for publicizing proposed acquisitions of leasehold interest in real property (except lease construction on a designated site) and that such acquisitions involving blocks of space of 10,000 or more square feet, unless otherwise exempt from publicizing by FAR 5.202 or paragraph (b) below, shall be publicized in local newspapers and/or periodicals instead of the CBD.

(b) Under section 18(c)(3) of the Office of Federal Procurement Policy Act, the Administrator has determined that it is not appropriate or reasonable to publish an advance notice of—

(1) Orders of $10,000 or more but not exceeding $50,000 under GSA nonmandatory ADP and telecommunications schedule contracts;

(2) Acquisitions of works of art, including the design, execution and installation of the artwork, under the Art-in-Architecture Program; and

(3) Supplemental agreements to leases of real property that are justified in accordance with Part 570 and involve—

(i) Building alterations;

(ii) An extension of the term of the lease, or

(iii) An increase in the amount of space leased in order to provide expansion space at the existing location to meet the needs of an agency.

(c) The Administrator has determined under section 18(c)(3) of the Office of Federal Procurement Policy Act, that the *Commerce Business Daily* is not appropriate for publicizing requirements for real property appraisal services and that proposed acquisitions of real property appraisal services, estimated to cost $10,000 or more, shall be published in local newspapers.

[50 FR 10040, Mar. 13, 1985, as amended at 50 FR 36082, Sept. 5, 1985; 52 FR 22655, June 15, 1987]

505.203 Publicizing and response time.

Proposed acquisitions of real property appraisal services, estimated to cost $10,000 or more, must be publicized in local newspapers at least 3 days before issuance of a solicitation, unless exempt from publicizing by FAR 5.202. Offerors must be provided at least 10 days to respond to a solicitation for real property appraisal services.

[52 FR 22655, June 15, 1987]

505.205 Special situations.

[49 FR 10809, Mar. 22, 1984]

505.205-70 Synopses of special notices used in connection with market searches for competitive sources.

(a) *General.* The term "sources-sought synopsis" means the type of Commerce Business Daily (CBD) notice designed to identify potential sources for procurements. The sources-sought synopsis provides an opportunity for the marketplace to indicate its interest in submitting bids, offers, proposals, or quotations for future acquisitions. It is normally used to discover if more than one firm is interested and qualified to provide a particular product or service, although a solicitation is not yet available. This type of synopsis has particular application when one contractor is thought to be uniquely capable of meeting the Government's minimum requirements and verification of this opinion is needed.

(b) *Property and services.* Sources-sought notices publicizing the Government's interest in anticipated property or service procurements may be published in the CBD, using the general format outlined in GSAR 505.207, except where security considerations prohibit such publication. A sources-sought synopsis may be published in connection with market searches for sources of property or services, other than those discussed in FAR 5.205, when a sources-sought synopsis is required to test the marketplace for competitive sources. If one or more potential contractors are identified as a result of such a market search, they shall be solicited. In conjunction with that solicitation, the specific procurement of the property or service shall be publicized in the CBD as required by FAR 5.201.

[50 FR 10040, Mar. 13, 1985]

505.207 Preparation and transmittal of synopses.

(a) Synopsis messages shall be prepared on a Standard Form 14, Telegraphic Message, when the message is to be transmitted electronically via teletype. Informal letterhead stationery shall be used when the synopsis message is to be mailed to the Commerce Business Daily.

(b) Text of synopsis messages must be prepared as prescribed in FAR 5.207.

(c) Notices described in GSAR 505.205-70 as sources-sought synopses shall be titled, "Property Sources Sought" or "Service Sources Sought." This shall be followed by a statement similar to the following (modifications may be made to suit agency needs):

Concerns having the ability to furnish the following property (services) are requested to give written notification (including the telephone number for a point of contact) to the acquiring office listed in this notice within ____ calendar days (no less than 30 days should be entered) from the date of this synopsis:

(Describe the requirement so as to furnish a complete property (service) description, and a condensation of other essential information, to provide concerns with an intelligible basis for judging whether they have an interest in the procurement. Such information may include a statement regarding the Government's belief that the property or service may be available only from a sole source and the reasons for such belief.)

This is not a formal solicitation. However, concerns that respond should furnish detailed data concerning their capabilities and may request to receive a copy of the solicitation when it becomes available.

[49 FR 10809, Mar. 22, 1984, as amended at 50 FR 10040, Mar. 13, 1985; 52 FR 22655, June 15, 1987]

505.270 Synopses of amendments to solicitations.

All amendments to solicitations for offers shall be published in the Commerce Business Daily when the amendment increases the anticipated dollar amount of the contract above the dollar threshold requiring synopsis of the proposed acquisition or the amendment alters the scope of the proposed contract in a manner which would generate the interest of contractors who may not have had an interest in the acquisition as originally synopsized.

[50 FR 10041, Mar. 13, 1985]

Subpart 505.3—Synopses of Contract Awards

505.301 General.

A notice announcing awards of all unclassified contracts, including those exempt from preaward synopsis requirements by FAR 5.202 and GSAR 505.202, shall be published in the CBD when the contract amount exceeds $25,000 and there are likely to be subcontracts awarded.

[50 FR 10041, Mar. 13, 1985, as amended at 53 FR 28886, Aug. 1, 1988]

Effective Date Note: Section 505.301 was temporarily removed at 53 FR 28886, Aug. 1, 1988. The temporary regulation expires August 1, 1989.

505.302 Preparation and transmittal of synopses of awards.

The provisions of GSAR 505.201 and 505.207 (except 505.207(c)) regarding preaward synopses messages are equally applicable to contract award synopses messages, except that the text shall be prepared as prescribed in FAR 5.302.

[50 FR 10041, Mar. 13, 1985]

505.303 Announcement of contract awards.

By complying with GSAR 505.303-70 contracting officers automatically fulfill the reporting requirements of FAR 5.303(a). When the Office of Congressional Affairs (EG) determines a contract award may be of interest to the public, it will provide the Office of

Public Affairs (EX) with a copy of the GSA Form 2932, Proposed Substantial Contract Award, or otherwise communicate the information to EX for release to the public. Contracting activities may submit information directly to EX if they believe public announcement is appropriate.

[50 FR 36082, Sept. 5, 1985]

505.303-70 Notification of proposed substantial awards and awards involving Congressional interest.

(a) *Applicability.* This section applies to notification of proposed awards resulting from either sealed bid or negotiated solicitations, including contract modifications exercising options:

(1) When a supply contract is involved and the dollar value exceeds or is estimated to exceed $500,000 (except for products whose points of origin are not readily identifiable or which involve foreign production points);

(2) When a design (Architect/Engineer) contract or construction contract is involved and the dollar value exceeds or is estimated to exceed $100,000; or

(3) When there is Congressional interest in any contract for supplies or services regardless of dollar value.

(i) When Congressional interest is involved, GSA Form 2932, Proposed Substantial Contract Award, or a facsimile message shall be prepared for transmittal to the Director of Congressional Affairs (EG) containing the following information:

Congressional Interest—(*Name of Congressman or Senator*)—(State)—Control No.
In behalf of (Name of firm and complete address)—(If award is not proposed to the bidder, explain why) ____________
____
____

(ii) In addition to the requirement in paragraph (a) of this section, when a Congressional inquiry is made orally with a contracting officer, and award or other information has been promised to a Congressman or Senator, GSA Form 2932 or the facsimile message shall contain the following statement:

"Unless notified to the contrary, we will assume that the (*Congressman or Senator*) has been advised by EG."

(b) *Codes.* The following codes shall be used in the appropriate columns of GSA Form 2932 or in the facsimile message, as applicable.:

(1) *DQ* for definite quantity contract.

(2) *SC* for schedule contract.

(3) *TC* for term contract other than schedule.

(4) *S* for small business concern.

(5) *O* for other than a small business concern.

(6) *NLS* for not labor surplus area.

(7) *LS* for labor surplus area.

(c) *Notification procedure.* (1) The contracting director shall be responsible for submitting directly to the Director of Congressional Affairs (EG) complete and factual data pertinent to any proposed award of the type described in paragraph (a) of this section.

(2) Regional offices (except Region W) shall prepare GSA Form 2932 and transmit the notification directly to the Director of Congressional Affairs (EG), by facsimile machine except as shown in paragraph (c)(4) of this section.

(3) Central Office and Region W contracting activities shall prepare GSA Form 2932 and transmit the notification (original only) directly to the Director of Congressional Affairs (EG). The notification(s) shall be placed in a messenger envelope and addressed as follows: PLEASE HAND-CARRY Attention: EG, GS Bldg.

(4) The following additional information shall be furnished on the GSA Form 2932 as applicable:

(i) Under Type of Contract insert "S" for sealed bid and "N" for negotiated. Include the applicable reference to the specific authority in parentheses for each contract awarded without providing for full and open competition; i.e., N(1) for only one responsible source.

(ii) Under Point of Production show the name (plant or operational unit), address (including county), and the dollar value for each production point. When the name of the supplier (subcontractor) is different from the contractor, show the supplier's or subcontractor's name, address (including county), and applicable dollar value for each point of production. When the offer does not clearly indicate a specific production point for the item(s); i.e., several sources shown for one item, the word "undeterminable" shall be stated in the Point of Production column, and the various production points (name, address, and county) will be listed. When there are multiple production points and specific items and their points of production are not shown, or when the number of production points exceed 10, show the word multiple and indicate immediately after, in parentheses, the total number of production points.

(iii) For definite quantity awards, show (A) the quantity and unit, in parentheses, under each production point, (B) the name of the requisitioning activity next to the applicable quantity, and (C) the requirement or portion thereof for overseas use.

(iv) The contracting officer's name and telephone number shall be typed or printed at the bottom of each report in the event additional information is required by the Director of Congressional Affairs (EG).

(d) *Release of awards.* (1) Unless notified to the contrary, contracting activities may release awards of the type described in paragraphs (c)(2) and (3) of this section, or information pertinent thereto, upon the expiration of two full workdays (48 hours) after the time and date of transmittal of the GSA form 2932 or the facsimile message to the Director of Congressional Affairs (EG).

(2) Preaward inquiries from offerors shall be processed in accordance with FAR 14.408 and 15.1001.

(e) Proposed exiguency or emergency awards and cases when the acceptance time in an offer is about to expire.

(1) The contracting activities shall transmit notifications as determined by their director directly to the Director of Congressional Affairs (EG), by telephone, followed by a completed GSA Form 2932 to confirm the oral notification.

(2) Release of notifications which require priority processing by the Director of Congressional Affairs (EG), shall be completed at the time and date specified by EG.

[50 FR 36082, Sept. 5, 1985]

Subpart 505.4—Release of Information

505.403 Requests from Members of Congress.

When responding to a congressional inquiry would result in disclosure of classified material, confidential business information, or information prejudicial to a competitive acquisition, the contracting officer shall consult with assigned legal counsel, refer the proposed reply to the head of the contracting activity and inform the Office of Congressional Affairs (EG) of the action taken. See GSAR 505.303-70 regarding notification of proposed substantial awards and awards involving congressional interest.

[50 FR 36082, Sept. 5, 1985]

Subpart 505.5—Paid Advertisements

505.502 Authority.

(a) *Newspapers.* The head of the contracting activity or the HCA's designee may approve the publication of paid advertisements in newspapers. Written approval is required for paid newspaper advertisements, except, when such publication is required by the FAR or the GSAR (see GSAR 505.101(b)). The contracting officer shall document the case file with the regulatory citation or written approval to support the use of paid newspaper advertisements.

(b) *Other media.* Advance approval is not required to place paid advertisements in media other than newspapers.

[49 FR 10809, Mar. 22, 1984, as amended at 50 FR 10041, Mar. 13, 1985]

505.503 Procedures.

The GSA Form 300, Order for Supplies or Services, may be used instead of the Optional Form 347, Order for Supplies and Services, when the dollar amount of the acquisition does not exceed the small purchase limitation or when issuing a delivery order under a basic ordering agreement with an advertising agency for an advertisement.

[50 FR 10041, Mar. 13, 1985]

505.504 Use of advertising agencies.

The GSA's policy is to use the services of commercial advertising agencies whenever it is determined that the services rendered by those agencies can increase competition for GSA contracts and improve the effectiveness of GSA advertising and marketing programs.

[50 FR 10041, Mar. 13, 1985]

PART 506—COMPETITION REQUIREMENTS

Subpart 506.2—Full and Open Competition After Exclusion of Sources

Sec.
506.202 Establishing or maintaining alternative sources.

Subpart 506.3—Other Than Full and Open Competition

506.302 Circumstances permitting other than full and open competition.
506.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.
506.303 Justifications.
506.303-1 Requirements.
506.303-2 Content.
506.304 Approval of the justification.

Subpart 506.4—Sealed Bidding and Competitive Proposal

506.401 Sealed bidding and competitive proposals.

Authority: 40 U.S.C. 486(c).

Source: 50 FR 10041, Mar. 13, 1985, unless otherwise noted.

Subpart 506.2—Full and Open Competition After Exclusion of Sources

506.202 Establishing or maintaining alternative sources.

Signatory authority for the determination and findings required by FAR 6.202 is delegated to the heads of contracting activities.

Subpart 506.3—Other Than Full and Open Competition

506.302 Circumstances permitting other than full and open competition.

506.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

A class justification has been established under the authority of section 303(c)(1) of the Federal Property and Administrative Services Act (41 U.S.C. 253(c)(1)) for the acquisition of utility services, as defined in FAR 8.301, that are available from only one source. A copy of the class justification may be obtained from the Office of GSA Acquisition Policy and Regulations (VP). The contract file for each action taken pursuant to the justification must contain a statement signed by the contracting officer that reads substantially as follows: "This contract action is taken pursuant to and is within the scope of the class justification for other than full and open competition for the acquisition of utility services available from only one source (41 U.S.C. 253(c)(1))."

[51 FR 44990, Dec. 16, 1986]

506.303 Justifications.

506.303-1 Requirements.

(a) The contracting officer shall review the facts provided by technical and requirements personnel to support their recommendation to use other than full and open competition. The contracting officer must be satisfied that the facts are correct before proceeding with the acquisition.

(b) When considering whether to establish a class justification, the contracting officer should determine whether the circumstances supporting the justification would be present in other GSA contracting activities. If such circumstances would be present in other contracting activities, the contracting officer should recommend that the Associate Administrator for Acquisition Policy approve a justification for use by all GSA contracting activities. The contracting officer should send the recommendations and supporting justification to the Associate

Administrator through appropriate channels for concurrence.

[51 FR 44991, Dec. 16, 1986]

506.303-2 Content.

Each justification for the use of other than full and open competition must address each requirement in FAR 6.303-2(a) and be prepared according to the format outlined below:

GENERAL SERVICES ADMINISTRATION

(Identify the contracting activity)

Justification for Other Than Full and Open Competition

(Set forth the facts and circumstances that justify the use of other than competitive procedures. The justification must provide the information required by FAR 6.303-2(a) (2) thru (11) and be listed in the same order as listed in the FAR using the following captions to identify each element:

Identification and description of action being approved.

Description of supplies or services required.

Identification of statutory authority.

Demonstration that the acquisition requires use of the authority cited.

Description of efforts to solicit as many offers as practicable.

Demonstration that the anticipated cost will be fair and resonable.

Description of the market survey conducted.

Other facts supporting the use of other than full and open competition.

List of sources that expressed an interest in the acquisition.

Statement of actions to overcome barriers to competition.)

Contracting Officer Certification.

This justification for other than full and open competition to be used for the acquisition of (describe work to be performed or product to be delivered) is accurate and complete to the best of my knowledge and belief.

Technical/Requirements Personnel Certificate

(Either refer to a certification provided by technical/requirements personnel and attach a copy to the certification or include the certification as a part of the justification and add a signature line for the technical or requirements official. This requirement applies when supporting data that is the responsibility of technical or requirements personnel form the basis for the justification.)

Date ————————————————

————————————————

(Signature of contracting officer)

Date ————————————————

(If applicable) ————————————————

(Signature of Technical/Requirements official)

Concurrence/Approval(s):

Date ————————————————

————————————————

(Signature of assigned legal counsel)

Date ————————————————

————————————————

(Signature of contracting director)

Date ————————————————

(If applicable) ————————————————

(Signature of contracting activity competition advocate)

Date ————————————————

(If applicable) ————————————————

(Signature of head of contracting activity)

Date ————————————————

(If applicable) ————————————————

(Signature of agency competition advocate)

Date ————————————————

(If applicable) ————————————————

(Signature of senior procurement excutive)

[51 FR 44991, Dec. 16, 1986]

506.304 Approval of the justification.

The justification for other than full and open competition (except for contracts awarded under FAR 6.302-7) must be approved in writing by:

(a) The contracting director, as defined in GSAR 502.1, for proposed contracts of $100,000 or less, unless the contract is exempt from the review and approval requirement by FAR 6.304(a)(1).

(b) The contracting activity competition advocate, as defined in GSAR 502.1, for contracts exceeding $100,000 but equal to or less than $1,000,000. The contracting director must coordinate and concur in all justifications for contracts expected to exceed $100,000.

(c) The head of the contracting activity (HCA), as defined in GSAR 502.1, for contracts exceeding $1,000,000 but equal to or less than $10,000,000. The contracting activity competition advocate must coordinate and concur in all justifications for contracts expected to exceed $1,000,000.

(d) The senior procurement executive, as defined in GSAR 502.1, for contracts exceeding $10,000,000. The agency competition advocate, as defined in GSAR 502.1, must coordinate and concur in all justifications before submitting them to the senior procurement executive for approval.

[51 FR 44991, Dec. 16, 1986]

Subpart 506.4—Sealed Bidding and Competitive Proposals

506.401 Sealed bidding and competitive proposals.

The requirement to document the contract file when the contracting officer determines that sealed bidding is not the appropriate method of contracting may be fulfilled by including a statement on the limited acquisition plan. The FAR does not require the contracting officer's determination be in the form of a justification or a determination and findings.

PART 507—ACQUISITION PLANNING

Subpart 507.1—Acquisition Plans

Sec.
507.100 Scope of subpart.
507.101 Definitions.
507.102 Policy.
507.104 General procedures.
507.105 Contents of written acquisition plans.
507.105-70 Contents of a limited acquisition plan.

Subpart 507.3—Contractor Versus Government Performance

507.305 Solicitation provisions and contract clauses.
507.306 Evaluation.
507.307 Appeals.

AUTHORITY: 40 U.S.C. 486(c).

Subpart 507.1—Acquisition Plans

SOURCE: 50 FR 14244, Apr. 11, 1985, unless otherwise noted.

507.100 Scope of subpart.

This subpart implements and supplements FAR Subpart 7.1 and prescribes policies and procedures for acquisition planning. The subpart is applicable to all elements of GSA with respect to the acquisition of personal property, nonpersonal services (including construction) and leasehold interests in real property.

507.101 Definitions.

(a) "Comprehensive acquisition plan" means a plan which encompasses the entire acquisition process beginning at the point when agency needs are established and including the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contract(s), contract financing, contract performance, contract administration and those technical and management functions directly related to the process of fulfilling agency needs by contract. It applies to the acquisition of personal property, nonpersonal services (including construction) and leases of real property in those cases where it has been determined that the criteria for such a plan have been met. It requires the coordination of all persons involved in the acquisition including representatives of legal, fiscal, technical, engineering, and contracting offices. Policies and procedures for this type of plan are set forth in GSA Order, Comprehensive Acquisition Planning (APD 2800.13).

(b) "Limited acquisition plan" means a detailed acquisition plan beginning with receipt of a purchase request or other comparable document by the contracting office. If contracting begins without such a document, planning should begin as soon as the contracting office is aware of a contract need. It includes the solicitation and award phases of contracting.

507.102 Policy.

All proposed acquisitions which are determined, in accordance with the requirements of GSA Order, Comprehensive Acquisition Planning (APD 2800.13), to meet the criteria for comprehensive acquisition planning shall have such a plan prepared for them. By definition, a comprehensive acquisition plan includes the elements contained within the limited acquisition plan. Consequently, all proposed acquisitions in excess of $25,000, except those for which a comprehensive acquisition plan has been prepared, shall have a limited acquisition plan completed for them. The value of proposed options which will be priced and/or evaluated shall be added to the basic contract value for determining whether the dollar threshold has been met. Before an unpriced and/or unevaluated option exceeding $25,000 is exercised a plan shall be prepared in accordance with the requirements of this subpart. No solicitation shall be issued until either a comprehensive acquisition plan or a limited acquisition plan has been prepared for acquisitions described in GSAR 507.100 unless waived as authorized by this subpart or GSA Order, Comprehensive Acquisition Planning, (APD 2800.13). A contract shall not be entered into without providing for full and open competition on the basis of a lack of acquisition planning or concerns relating to the amount of funds available for acquisition.

[50 FR 14244, Apr. 11, 1985, as amended at 50 FR 36083, Sept. 5, 1985]

507.104 General procedures.

(a) The contracting officer shall be responsible for preparing a limited acquisition plan. All such plans shall be reviewed and approved at least one level above the individual writing the plan. The head of the contracting activity (HCA) may require review and approval at a higher level.

(b) When requirements are received in the last month of the fiscal year and award is anticipated during the same month, the plan shall be reviewed and approved at a level no lower than the contracting director.

(c) All plans over $100,000 must be in writing, except as otherwise provided below. HCA's may authorize oral plans for acquisitions between $25,000 and $100,000. For oral plans, the file must be documented with the name of the individual who approved the plan.

(d) The contracting director may waive the requirement for a written limited acquisition plan when the Government's requirement must be met in cases of unusual or compelling urgency. The individual responsible for preparing the plan will present (at the minimum) an oral plan to at least the next higher level. The file must be documented to show: the nature of the urgency, the content of the oral plan, and the name of the individual who approved it. This document may be prepared after award when preparation prior to award would unreasonably delay the acquisition. The documentation segment may be included in the justification required by FAR 6.302-2(c).

(e) Acquisition plans for contracts expected to exceed $100,000 which propose using other than full and open competition must be coordinated with and concurred in by the cognizant competition advocate unless the proposed contract will be awarded under the authority at FAR 6.302-5 or will be awarded under a class justification approved by the Assistant Administrator for Acquisition Policy. HCA's may require coordination and concurrence for contracts equal to or less than $100,000. The cognizant competition advocate is—

(1) The contracting activity competition advocate, as defined in Subpart 502.1, for plans for contracts exceeding $100,000, but equal to or less than $10,000,000.

(2) The agency competition advocate, as defined in Subpart 502.1, for plans for contracts exceeding $10,000,000. The contracting activity competition advocate shall concur in all plans before submission to the agency competition advocate.

(f) The specific content of a plan will vary depending on the nature of the acquisition and the dollar value involved. A suggested, general limited plan outline is at GSAR 507.105-70. For specific programs HCA's may authorize: (1) Continued use of existing detailed plan outlines that generally meet the requirements of GSAR 507.105-70; (2) development of standard plan outlines meeting the needs of individual programs; (3) substitution of automated systems which adequately address individual plan elements for the written requirement; (4) modification of the suggested outline by deleting inapplicable elements or adding new ones as needed.

507.105 Contents of written acquisition plans.

507.105-70 Contents of a limited acquisition plan.

A suggested general limited acquisition plan outline follows. The items should be discussed as appropriate.

LIMITED ACQUISITION PLAN

(a) *Analysis of the Requirement.* (1) Description of the Requirement—

(i) Commodity or Services: Briefly describe NSN or other identifying characteristics.

(ii) Number of line items: (If applicable).

(iii) Estimated dollar value: Total ——— Unit Price ———.

(iv) Contract period: ———.

(v) Buyers name: ———.

(2) History of previous acquisitions—

(i) Method of acquisition: Sealed bidding? Competitive proposals?

(ii) Competition:

(A) Full and open competition.

(B) Full and open competition after exclusion of sources.

(C) Other than full and open competition.

(iii) Type of contract:

(iv) Conditions peculiar to previous acquisitions:

(A) Minimum order limitation.

(B) Maximum order limitation.

(C) Delivery time.

(D) Prices Paid.

(E) Competition received.

(F) Set asides.

(G) Problems in evaluating offers.

(b) *Current considerations affecting the acquisition.* (1) Socio-Economic considerations.

(i) Small business set aside.

(ii) Labor surplus set aside.

(iii) Subcontracting provisions.

(2) Use of options.

(i) Evaluated.

(ii) Not evaluated.

(3) Market Survey/Pricing.

(i) Competition expected?

(ii) How can competition be enhanced?

(iii) Market Survey. If no survey, explain why.

(iv) Pricing data.

(v) System life costing feasibility?

(A) Cost data needed?

(B) Commercial sales/marketing price data needed?

(C) Audit report needed?

(4) Economic price adjustments?

(5) Support status.

(i) Backorders.

(ii) Delinquencies.

(iii) No coverage.

(6) Acquisition approach.

(i) New/changed acquisition methods?

(ii) Method of acquisition: Sealed bidding? Competitive proposals?

(iii) Contract type.

(iv) Evaluation method.

(c) *Milestone events.* *Date*

(1) Purchase request.

(2) Acquisition plan approval.

(3) Justification and approval for other than full and open competition and/or any required D&F approval.

(4) Issuance of synopsis.

(5) Issuance of solicitation.

(6) Evaluation of proposals, audit, other field pricing reports, and technical reports.

(7) Beginning and completion of negotiations.

(8) Contract preparation, review, clearance.

(9) Contract award.

Subpart 507.3—Contractor Versus Government Performance

§ 507.305 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at Section 552.207-70, Report of Employment Under Commercial Activities, in solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contracts that result from the solicitations, whether or not a cost comparison is conducted.

[52 FR 28827, Aug. 4, 1987]

507.306 Evaluation.

(a) The social security and thrift/profit sharing plan contributions will not affect the determination of the low responsive offer and should not be included on the abstract of offers. The contributions should not be announced at the public bid opening, but should be included on the cost comparison form and made available during the public review period.

(b) Contracting officers shall request documentation verifying contributions from the low responsive responsible offeror only if the contributions will affect the outcome of the cost comparison. The documentation provided by the low offeror should not be released to other offerors.

[52 FR 8590, Mar. 19, 1987]

§ 507.307 Appeals.

Appeal procedures for informal administrative review of the initial cost comparison results are contained in GSA Order, Implementation of the OMB Circular A-76 Productivity Improvement Program (ADM P. 5400.40).

[52 FR 28827, Aug. 4, 1987]

PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

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Subpart 508.8—Acquisition of Printing and Related Supplies

508.802 Policy.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10811, Mar. 22, 1984, unless otherwise noted.

508.002 Use of other Government supply source.

508.002-70 Department of Defense contracts.

The Defense Logistics Agency, Defense Fuel Supply Center, Cameron Station, Alexandria, VA 22314, and the Defense General Supply Center, Richmond, VA 22319, prepare annual contracts for lubricating oils, greases, gear lubricants, packaged petroleum products, gasoline, fuel oil (diesel and burner), kerosene, solvents, and coal. Electronic items are available from the Defense Electronic Supply Center, Dayton, OH 45444. Except as otherwise provided by FPMR 41 CFR 101-26.602 of the FPMR, the supply sources listed below are mandatory.

(a) Lubricating oils, greases, and gear lubricants. See FPMR 41 CFR 101-26.602-1.

(b) Packaged petroleum products. See FPMR 41 CFR 101-26.602-2.

(c) Gasoline, fuel oil (diesel and burner), kerosene, and solvents. See FPMR 41 CFR 101-26.602-3.

(d) Coal. See FPMR 41 CFR 101-26.602-4.

(e) Electronic items. See FPMR 41 CFR 101-26.603.

508.002-71 District of Columbia Government—Department of Corrections.

(a) The District of Columbia is authorized, under Pub. L. 88-622, to sell industrial products and services to Federal agencies. A listing of the commercial products and services is available from:

DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS
INDUSTRIES DIVISION
LORTON, VA 22079

Except as otherwise provided in paragraphs (b) and (c) of this 508.002-71, these supplies and services may be procured on an optional basis.

(b) Laundry services for Federal agencies in the Washington, DC, metropolitan area should be obtained from the Department of Corrections except when the department approves procurement from another source.

(c) Official U.S. Government tags for use on motor vehicles shall be acquired under FPMR 41 CFR 101-38.3.

508.002-72 District of Columbia Government indefinite delivery contracts.

The District of Columbia places indefinite delivery contracts for sand, gravel, premixed concrete, Portland cement, slag and slag screenings, and road salt that may be used as needed in the Washington, DC, area. Details of these contracts may be obtained from the Purchasing Officer, DC Government, 613 G St. NW, Room 1002, Washington, DC 20001.

Subpart 508.3—Acquisition of Utility Services

508.303 General.

When utility services as defined in FAR 6.302-1(b)(5) are available from only one source, the contracting officer shall cite the authority in FAR 6.302-1 and refer to the class justification explained in GSAR 506.302-1. Where two or more suppliers serve the same geographical area, competitive procedures must be followed or a separate justification prepared, supporting the use of other than full and open competition.

[50 FR 10042, Mar. 13, 1985]

Subpart 508.6—Acquisition From Federal Prison Industries, Inc.

508.602 Policy.

(a) All proposed acquisitions of supplies listed in the Schedule of Products made in Federal Penal and Correctional Institutions (called the Schedule) shall be documented with the authority cited in FAR 6.302-5 and shall refer to the class justification explained in GSAR 506.302-5.

(b) A contract for services shall not be awarded to the Federal Prison Industries, Inc. (FPI) without providing for full and open competition unless the contracting officer justifies such action in accordance with FAR 6.302. FAR 6.302-5 may not be cited as justification for a sole source acquisition of services from FPI because 18 U.S.C. 4121-4128 does not authorize or require the procurement of services from FPI.

[50 FR 10042, Mar. 13, 1985, as amended at 51 FR 24668, July 8, 1986]

508.604 Ordering procedures.

508.604-70 Delinquent delivery orders.

(a) Contracting officers shall establish delivery schedules based on the leadtime required by Federal Prison Industries (FPI) to prevent avoidable delinquent orders.

(b) Should delivery orders become delinquent, the contracting officer shall monitor progress until all deliveries are complete.

(c) Contracting officers' efforts to negotiate an adjustment to the delivery schedule shall not include a request for price adjustment.

(d) Delinquent orders may indicate the need to request clearance to procure from other sources until FPI can make deliveries on time.

(e) If FPI cannot furnish the supplies on time, and the items can be obtained from commercial sources in much less time than from FPI, clearance for buying them from another source shall be obtained under FAR 8.605.

508.605 Clearances.

508.605-70 Federal Prison Industries clearance numbers.

When products listed on the Schedule are bought from a source other than FPI, permission to make the purchase shall be obtained from FPI in the form of a clearance number. This number shall be cited in the solicitation for offers and all subsequent award documents.

[50 FR 10042, Mar. 13, 1985]

Subpart 508.7—Acquisition From the Blind and Other Severely Handicapped

508.705 Procedures.

508.705-1 General.

All proposed acquisitions from the blind and other severely handicapped shall be documented with the authority cited in FAR 6.302-5.

[50 FR 10042, Mar. 13, 1985]

508.705-70 Adding items to the procurement list.

(a) When a central non-profit agency (CNA) expresses an interest in a particular commodity or service being added to the Procurement List, the contracting officer shall provide the CNA with the most recent solicitations issued for the supply or service involved and the price(s) at which the item was awarded.

(b) The Committee for Purchase from the Blind and Other Severely Handicapped (the Committee), if requested by the CNA, may assign the supply or service to the CNA for development by a workshop and will list the item in the Preliminary Evaluation Record. A copy of the record, updated monthly, is maintained by the Office of Small and Disadvantaged Business Utilization (AU).

(c) Before issuing a solicitation, contracting officers shall request from the CNA, the status of any item previously identified as one in which the Committee has expressed interest.

(d) The Committee may request that a procurement be delayed pending Committee action. The contracting activity shall consult with AU before rejecting such a request.

[50 FR 10042, Mar. 13, 1985, as amended at 51 FR 24668, July 8, 1986]

508.705-71 Workshop performance capability.

In addition to the annual requirement, the purchase document shall include an estimated monthly requirement. The contracting officer may verify the workshop's ability to satisfy the Government's anticipated requirement by requesting a preaward survey. If it is determined that the Government's estimated monthly requirement exceeds the workshop's ability to perform, a purchase exception may be requested only for those quantities which cannot be provided in a timely manner by the workshop.

508.705-72 Allocations and orders.

In addition to the requirements prescribed in FAR 8.705, requests for allocations and orders shall indicate the packaging, packing, or marking required if it differs from the specification cited, or otherwise provided in the Procurement List. Pricing of nonstandard requirements is covered in FAR 8.707.

[50 FR 10043, Mar. 13, 1985]

508.705-73 Delinquent delivery orders.

(a) Contracting officers shall take appropriate action on delinquent delivery orders until all deliveries are made. Contracting officers shall follow the procedures outlined in FAR 8.705 and the regulations of the Committee for Purchase from the Blind and Other Severely Handicapped (see 41 CFR 51-5.2 and 51-5.7).

(1) In cases of excusable delays, contract delivery schedules should be extended without obtaining consideration. However, when the delay is inexcusable, normal procedures should be followed in reviewing and adjusting contract prices if appropriate.

(2) Records of delinquent delivery orders shall be maintained whether or not the delivery schedule is adjusted.

(b) If the CNA delays acting on the request or refuses to grant a purchase exception, the matter shall be referred through the contracting director, to the head of the contracting activity for expeditious resolution of the problem with the Committee.

[49 FR 10811, Mar. 22, 1984, as amended at 51 FR 24668, July 8, 1986]

508.706 Purchase exceptions.

508.706-70 Citation of purchase exception number.

Purchases from commercial sources under FAR 8.706 shall cite the purchase exception number issued by the CNA in the solicitation for offers and all later award documents.

Subpart 508.8—Acquisition of Printing and Related Supplies

508.802 Policy.

The Director of the Reproduction Services Division (CAR) has been designated as the central printing authority for GSA and serves as the liaison with the Joint Committee on Printing and the Public Printer on all matters related to printing.

[52 FR 28827, Aug. 4, 1987]

PART 509—CONTRACTOR QUALIFICATIONS

Subpart 509.1—Responsible Prospective Contractors

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509.507 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10812, Mar. 22, 1984, unless otherwise noted.

Subpart 509.1—Responsible Prospective Contractors

509.104 Standards.

509.104-4 Subcontractor responsibility.

(a) Before authorizing a contractor to change a designated source of supply or any designated inspection or production point, the contracting officer shall determine that such change will not be detrimental to the ability of the contractor to fulfill his obligations under the terms of the contract.

(b) In making an evaluation of the requested change, contracting officers shall exercise precautions with regard to new sources similar to those taken in determining the acceptability of the initial supply source. If the contracting officer approves a change of supply source, inspection point, or production point, he/she shall issue an appropriate contract modification specifying the nature of the change and the effective date. Where feasible, the modification shall provide that delivery orders placed prior to the effective date, will remain in effect as written. In determining the effective date, contracting officers shall take into consideration the time necessary for offices concerned to take required actions thereunder.

(c) The contracting officer shall insert the clause at 552.209-70, Subcontractor Eligibility, in solicitations and contracts when a construction contract, or a contract for dismantling, demolition or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limitation.

509.105 Procedures.

509.105-1 Obtaining information.

(a) In making a determination of responsibility, the contracting officer may use the GSA Form 527, Contractor's Qualifications and Financial Information, to obtain information regarding financial capability from a prospective contractor. A preaward survey should be requested when the conditions in FAR 9.106-1 apply.

(b) Advice and assistance should be obtained from all appropriate activities, including legal counsel, quality control, and finance, in arriving at a determination that an offeror qualifies as responsible under the standards set forth in FAR 9.105.

(c) Preaward surveys shall be conducted in accordance with FAR 9.105 and 9.106 and this subpart. The contracting officer or his/her designee shall forward a preaward survey request to the surveying activity(ies) using Standard Form 1403, Preaward Survey of Prospective Contractor (General), accompanied by the appropriate subparts of the preaward survey (Standard Forms 1404 through 1408). The Federal Supply Service is authorized to use GSA Form 353, Plant Facilities Report, for preaward surveys instead of Standard Forms 1403 through 1406. The contracting officer shall complete Section I of the GSA Form 353 in accordance with instructions in section 553.370-353.

(d) For the purposes of this subpart, the "auditor" in FAR 9.105-1(b)(2)(ii) is the Assistant Inspector General for Audits in the Central Office and the Regional Inspector General for Audits in the regions except for the evaluation of a prospective contractor's financial competence and credit needs, for which it is the Chief, Credit and Finance Section, Region 6.

[49 FR 10812, Mar. 22, 1984, as amended at 51 FR 39862, Nov. 3, 1986; 51 FR 45896, Dec. 23, 1986]

509.105-3 Disclosure of preaward information.

When an offer is rejected because of a determination by the contracting officer that the prospective contractor is not responsible, the contracting officer shall notify the prospective contractor by letter, setting forth the basis for the rejection. This will provide the offeror with the opportunity, where applicable, to cure the factors that lead to the nonresponsibility determination.

509.105-70 Contractor certification of responsibility.

(a) The contracting officer shall insert the certification provision at 552.209-71, Certification Regarding Previous Crimes, Debarments, Suspensions, and Defaults, in solicitations when the resulting contract is expected to exceed the small purchase limitation.

(b) When an offeror's certification indicates an indictment for or conviction of a specified offense, debarment or suspension, or default of a contract, the contracting officer shall:

(1) Request such additional information from the low, responsive offeror as the contracting officer deems necessary in order to make a determination of the offeror's responsibility, and

(2) Notify the Office of Inspector General (OIG) in the case of a criminal indictment or conviction.

(c) Information furnished by offerors shall be used by contracting officers:

(1) When making the determination of an offeror's responsibility, and

(2) When deciding in accordance with 509.4, whether debarment or suspension action should be recommended.

(d) Offerors who do not furnish the certification shall be given an opportunity to remedy the deficiency. Failure to furnish the certification by time of contract award renders the offeror nonresponsible.

(e) The contract clause at 552.209-72, Termination—Erroneous Representation Concerning Crimes, Debarments, Suspensions, and Defaults, shall be included in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation.

509.106 Preaward surveys.

509.106-1 Conditions for preaward surveys.

(a) The contracting officer, in evaluating whether to initiate a preaward survey, shall consider:

(1) The experience and past performance record of the offeror and the dollar value of the procurement;

(2) The extent and currency of previous preaward surveys;

(3) Whether a bid guarantee is submitted and the type of guarantee submitted (i.e., corporate surety, individual surety, letter of credit);

(4) Information as to the offeror's prior performance; and

(5) The adequacy of financial information submitted by the offeror (i.e., certified balance sheets and income statements, audited annual reports). Should a financial analysis be determined necessary, it should include a credit report to identify delinquent debts, especially those owed to the Federal Government.

(b) The preaward survey may be limited in scope pursuant to FAR 9.106-2(e) to those aspects of the responsibility determination for which the contracting officer is lacking information.

(c) Notwithstanding the other provisions of this subpart, the contracting officer shall obtain a preaward survey, consistent with FAR 9.106-1(a) and 509.106-1(a) of this chapter, when the contracting officer has doubts as to the offeror's responsibility.

509.106-70 Disagreement with preaward survey recommendation.

When the contracting officer does not concur with the preaward survey recommendation, the contract file must be documented as to the basis of the determination of contractor responsibility. The concurrence of an official one level above the contracting director (see GSAR 502.101) shall be obtained before awarding of a contract to a firm which received an unfavorable preaward survey. If the contracting officer finds a small business nonresponsible, the certificate of competency procedures in FAR 19.6 must be used. The activity that prepared the preaward survey must be given a copy of the contracting officer's justification for overriding the preaward survey recommendation.

[51 FR 39862, Nov. 3, 1986]

Subpart 509.2—Qualified Products

509.206 Acquiring qualified products.

509.206-2 Solicitation provision and contract clause.

The contracting officer shall insert one of the clauses at GSAR 552.209-73, Product Removal from Qualified Products List, in solicitations and contracts, when qualified products are to be acquired. These clauses supplement the clauses at FAR 52.209-1 and 52.209.2.

[50 FR 10043, Mar. 13, 1985]

509.270 Waiver of qualification requirement.

(a) When a contracting activity has a requirement for a product to be acquired under a specification which includes a qualification requirement and the contracting officer has evidence to support a conclusion that it is likely that a solicitation for a Qualified Products List (QPL) product would not produce acceptable offers or full and open competition, a request for a waiver from the qualification requirement of the specification shall be submitted by the contracting director to the Director, Commodity Management Division (FCM) or, where the specification management responsibility has been delegated to a regional office, to the appropriate regional FSS Engineering Branch. The reasons why the waiver is being requested shall be stated in the request.

(b) If a waiver is granted, it shall be stated in the solicitation that the qualification requirement of the specification does not apply. Unless a notification of waiver states otherwise, each waiver granted shall apply only to the specific acquisition for which the waiver was requested, and shall not be construed as authorizing a waiver with respect to any other acquisition.

[50 FR 10043, Mar. 13, 1985]

Subpart 509.4—Debarment, Suspension, and Ineligibility

509.400 Scope of subpart.

This subpart implements and supplements FAR Subpart 9.4 with respect to the debarment and suspension of contractors and the maintenance, distribution, and use of a consolidated list of debarred, suspended, and ineligible contractors. This subpart applies to all elements of GSA regarding the acquisition of personal property and nonpersonal services, including constuction, and the leasing of real property.

[49 FR 48726, Dec. 14, 1984]

509.403 Definitions.

In addition to the definitions set forth in FAR 9.403, the following terms have special meaning as indicated:

(a) "Debarring official" and "suspending official" mean the Associate Administrator for Acquisition Policy or a designee.

(b) "Notice" means a written communication sent by certified mail, return receipt requested, to the last known address of a party, its identified counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed.

(c) The "fact-finding official" for GSA is the Chairman of the General Services Administration Suspension and Debarment Board within the GSA Board of Contract Appeals or the Chairman's designee(s).

[49 FR 10812, Mar. 22, 1984, as amended at 50 FR 48726, Dec. 14, 1984; 50 FR 36083, Sept. 5, 1985; 52 FR 22656, June 15, 1987]

509.404 Consolidated list of debarred, suspended, and ineligible contractors.

The debarring and suspending official is responsible for compiling and maintaining the Consolidated List. HCA's shall ensure that the Consolidated List is used effectively by agency contracting officers.

[52 FR 22656, June 15, 1987

509.404-70 Agency records.

The debarring and suspending official shall maintain records containing the information required by FAR 9.404, in accordance with agency practies.

509.405 Effect of listing.

Prior to initiating a pre-award survey or any procurement action, the Consolidated List, as well as the list of contractors proposed for debarment by GSA, must be reviewed by the responsible contracting officer. Bids received from any listed contractor in response to an Invitation for Bids will be opened, entered on the Abstract of Bids, and rejected unless the debarring or suspending official determines in writing that there is a compelling reason to consider the bid. Proposals, quotations or offers received from any listed contractor must not be evaluated for award or included in the competitive range, and discussions must not be conducted with such offeror, unless the debarring or suspending official determines, in writing, that there is a compelling reason to do so.

[52 FR 22656, June 15, 1987

509.405-1 Continuation of current contracts.

(a) Notwithstanding the debarment or suspension of a contractor, contracting officers may continue contracts or subcontracts in existence at the time of the debarment or suspension. However, termination of current contracts should be considered under the circumstances set forth in paragraphs (a)(1) and (2) of this section.

(1) Termination for default under a contract's "Default" clause is appropriate if the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of the contract. Debarment or suspension of the contractor for reasons unrelated to the performance of the contract will not support a termination for default.

(2) Termination for convenience or cancellation under appropriate contract provisions should be considered if the contractor presents a significant risk to the Government in completing a current contract, and such action is determined to be in the Government's best interest. In making this determination, the contracting officer should consider such factors as the:

(i) Seriousness of the cause for debarment or suspension;

(ii) Extent of contract performance;

(iii) Potential costs of termination and reprocurement;

(iv) Urgency of the requirement and the impact of the delay of reprocurement;

(v) Availability of other safeguards to protect the Government's interest until completion of the contract.

(b) A decision to terminate an existing contract with a debarred or suspended contractor under a "Default," "Termination for Convenience," or "Cancellation" clause must be concurred in by assigned legal counsel and approved at a level above the contracting officer.

(c) The debarring or suspending official may make a determination, as provided in FAR 9.405-1(b), that there are compelling reasons to accord a debarred or suspended contractor treatment other than that required by FAR 9.405.

[49 FR 48727, Dec. 14, 1984, as amended at 50 FR 36083, Sept 5, 1985]

509.405-2 Restrictions on subcontracting.

The debarring or suspending official may make a determination, as provided in FAR 9.405-2, that there are compelling reasons to accord a debarred or suspended contractor treatment other than that required by FAR 9.405.

[50 FR 36083, Sept. 5, 1985]

509.406 Debarment.

509.406-1 General.

The debarring official may determine compelling reasons as provided by FAR 9.406-1(c).

[49 FR 48727, Dec. 14, 1984]

509.406-3 Procedures.

(a) *Investigation and referral.* (1) Any constituent element of GSA that becomes aware of circumstances which may serve as the basis for a debarment shall refer those circumstances to the debarring official through appropriate channels for consideration of debarment action. However, circumstances that involve possible criminal or fraudulent activities shall first be reported to the Office of the Inspector General (OIG) for investigative consideration, in accordance with GSA Standards of Conduct (ADM 7900.9), GSPMR 105.735-216, Reporting Suspected Irregularities. If appropriate, the Office of Inspector General shall make a referral to the debarring official.

(2) At a minimum, referrals by the Office of Inspector General or other GSA organizational components for consideration of debarment action should include:

(i) The recommendation and rationale for the referral (see FAR 9.406);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list of all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact finding proceeding and the subject matter of their testimony;

(iv) A list of all the contractors involved, either as principals or as codes, and DUNS Number);

(v) A statement of GSA's acquisition history with such contractors, including any recent experience under a GSA contract; or, in the case of referrals by the Office of Inspector General, copies of the pertinent contracts.

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceeding, or administrative claim before The Board of Contract Appeals; and

(vii) A statement from the cognizant contracting activity regarding the impact of the debarment action on GSA programs for debarment referrals not transmitted by the Inspector General.

(3) Referrals may be returned to the originator for further information, investigation, or development.

(b) *Notice of proposal to debar.* (1) Upon receipt of a completed referral, the debarring official shall decide whether to initiate debarment action, after coordinating the matter with assigned legal counsel.

(2) Where a determination is made to initiate action, affected contractors and any specifically named affiliates shall be given written notice of the information required by FAR 9.406-3 and the information contained in GSAR 509.406-3.

(3) Contracting activities are to be notified of any proposed debarment.

(4) Where a determination is made not to initiate action, notice shall be given to the agency official who made the referral.

(c) *Decision-making process.* (1) Contractors shall be given an opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to a proposed debarment. However, if a response to the debarment notice is not received by the debarring official within 30 calendar days of receipt of the notice, the debarment shall become final.

(2) If, in response to the debarment notice, the contractor, or a representative, desires to present information and arguments in person to the debarring official, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the contractor. The oral presentation shall be informally conducted and a transcript need not be made. The contractor may, however, supplement the oral presentation with written information and arguments for inclusion in the administrative record.

(3) In actions not based upon a conviction or civil judgment and where the contractor disputes facts relating to the proposed debarment, the contractor may also request, and shall be entitled to, a hearing before the agency fact-finding official. The hearing will be conducted within 20 calendar days of receipt of the contractor's response, unless a longer period of time is requested by the contractor.

(4) The purpose of a hearing is to: (i) Afford the affected contractor the opportunity to dispute facts relating to the proposed debarment through the submission of oral and written evidence; (ii) provide the debarring official with findings of fact based on a preponderance of evidence; and (iii) provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(5) Hearings will be conducted by the fact-finding official in accordance with rules promulgated by that official. The rules shall be as informal as is practicable, consistent with principles of fundamental fairness and FAR Subpart 9.4 and GSAR Subpart 509.4; they shall provide an opportunity for the affected contractor to appear with counsel, submit documentary evidence, present witnesses, and cross-examine any witness GSA presents. The fact-finding official shall make a transcribed record of the hearing and make it available, at cost, to the affected contractor upon request, unless the contractor and GSA, by mutual agreement, waive the requirement for a transcript.

(6) The hearing shall be initiated by a formal written transfer of the matter by the debarring official to the fact-finding official.

(7) Upon receipt of such a transfer, the fact-finding official shall notify the affected contractor, schedule a hearing date, and provide the contractor an opportunity to present written evidence and oral testimony, and to cross examine opposing witnesses. The fact-finding official shall deliver written findings to the debarring official (together with a transcription of the proceeding, if made) within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and determine whether a cause for debarment exists.

(d) *Debarring official's decision.* The debarring official's final decision shall be made, in writing, and notice of the decision given in accordance with FAR 9.406-3. A copy of the notice shall be given to affected agency components.

[49 FR 10812, Mar. 22, 1984, as amended at 49 FR 48727, Dec. 14, 1984; 51 FR 39862, Nov. 3, 1986]

509.407 Suspension.

509.407-1 General.

The suspending official may determine compelling reasons as provided by FAR 9.407-1(d).

[49 FR 48728, Dec. 14, 1984]

509.407-3 Procedures.

(a) The provisions of 509.406-3(a) apply to investigations and referrals for suspensions as if for debarments.

(b) *Notice of suspension.* (1) Upon receipt of a completed referral, the suspending official shall decide whether to suspend, after coordinating the matter with assigned legal counsel.

(2) In cases not based on an indictment, the suspending official shall, in appropriate cases, obtain through OIG the written advice of the Department of Justice, or state prosecutorial authority as to whether substantial interests of the Federal or state govern-

ment in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by the conduct of a hearing before the agency fact-finding official. If, on the basis of advice received, the suspending official determines that substantial interests of the Federal or a state government would be impaired the suspending official shall advise the contractor in the notice.

(3) Notice shall be furnished as provided in 509.407-3 except that the notice to the contractor shall contain the information required by FAR 9.407-3 and contained in 509.407-3.

(c) *Decision-making process.* (1) Contractors shall be given an opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to a suspension. However, to be considered, a response must be received by the suspending official within 30 calendar days of receipt of the suspension notice.

(2) When requested, an oral presentation before the suspending official shall be conducted as outlined in 509.406-3.

(3) In actions not based on an indictment or a suspension by another agency, and where the contractor disputes facts relating to the suspension, the contractor may also request, and shall be entitled to, a hearing before the agency fact-finding official, unless a determination has been made that substantial interests of the Government would be prejudiced by a hearing. The hearing will be conducted within 20 calendar days of receipt of the contractor's response, unless a longer period of time is requested by the contractor.

(4) The purpose of a hearing is to: (i) Afford the affected contractor the opportunity to dispute facts relating to the suspension action through the submission of oral and written evidence, and (ii) provide the suspending official with a determination as to whether adequate evidence exists to support the cause for suspension. Hearings shall be conducted as outlined in 509.406-3.

(d) The suspending official's decision shall be made in writing and notice shall be given in accordance with FAR 9.406.

[49 FR 10812, Mar. 22, 1984, as amended at 49 FR 48728, Dec. 14, 1984]

Subpart 509.5—Organizational Conflicts of Interest

SOURCE: 49 FR 48728, Dec. 14, 1984, unless otherwise noted.

509.503 Waiver.

Within GSA the heads of contracting activities are the approval authority for requests to waive the general rules or procedures of FAR 9.5.

509.507 Procedures.

In the event a potential contractor disagrees with the contracting officer's resolution of a potential organizational conflict of interest, (see FAR 9.507(b)(4)) the matter shall be referred to the Assistant Administrator for Acquisition Policy for a determination.

PART 510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

510.001 Definitions.
510.004 Selecting specifications or descriptions for use.
510.004-70 Solicitations, brand name or equal descriptions.
510.004-71 Offer evaluation and award, brand name or equal descriptions.
510.007 Deviations.
510.007-70 Responsibilities of the contracting officer.
510.007-71 Notice of determination.
510.011 Solicitation provisions and contracts clauses.
510.070 Specifications.
510.070-1 Exceptions to mandatory use of Federal specifications.
510.070-2 Optional use of interim Federal specifications.
510.070-3 Use of Federal of interim Federal specifications and standards.
510.070-4 Other than Federal and interim Federal specifications.
510.007-5 Deviations from GSA stock or Federal supply schedules.
510.071 Standards.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10815, Mar. 22, 1984, unless otherwise noted.

510.001 Definitions.

"Specification Manager" means an official (within the Office of Federal Supply and Services for Federal or Interim Federal Specifications, or the program office for other than Federal specifications) responsible for reviewing a contracting officer's referral of a request for a deviation from a specification.

[50 FR 10043, Mar. 13, 1985]

510.004 Selecting specifications or descriptions for use.

(a) *Brand name products or equal.*—(1) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product no longer applies, the reference thereto shall be deleted from the purchase description. Information on additions and deletions shall be immediately communicated to the specification manager.

(2) *Specifying essential characteristics.* (i) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirements. (See GSAR 510.004-70.) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(ii) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g., a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

(b) *Limitations on use of brand name or equal purchase descriptions*—(1) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote full and open competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the clause at GSAR 552.210-74 would be impracticable, the requirement to include the entry described in GSAR 510.004-70(a), shall not apply. If the clause is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the clause applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to procure a particular product under the guise of competitive procurement to the exclusion of other products that would meet the actual needs.

(2) In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practical.

(3) *Approval required.* A brand name or equal purchase description shall not be used unless it has been approved by the contracting director.

[50 FR 36083, Sept. 5, 1985]

510.004-70 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows shall be prominently inserted in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies.

Bidding on:
Manufacturer's Name————.
Brand————.

No.————.

(b) Because offerors frequently overlook the requirements of the clause at 552.210-74, Brand Name or Equal, the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page listing several such items, or in a manner that may otherwise direct the offeror's attention to this clause:

OFFERORS OFFERING OTHER THAN BRAND NAME ITEMS IDENTIFIED HEREIN SHOULD FURNISH WITH THEIR OFFERS ADEQUATE INFORMATION TO ENSURE THAT A DETERMINATION CAN BE MADE AS TO EQUALITY OF THE PRODUCT(S) OFFERED (SEE THE CLAUSE ENTITLED BRAND NAME OR EQUAL SET FORTH IN SECTION 552.210-74 OF THE GSA ACQUISITION REGULATION.)

(c) If offer samples are requested for brand name or equal procurements the above notice shall not be included in the solicitation.

[49 FR 10815, Mar. 22, 1984. Redesignated at 50 FR 36084, Sept. 5, 1985]

510.004-71 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should readvertise the requirements, using a purchase description that sets forth the essential characteristics.

[49 FR 10815, Mar. 22, 1984. Redesignated at 50 FR 36084, Sept. 5, 1985]

510.007 Deviations.

The head of the contracting activity shall ensure that the requirements of FAR 10.007 and this subpart are complied with.

510.007-70 Responsibilities of the contracting officer.

(a) The procuring contracting officer shall obtain the concurrence of the specification manager in the Office of Federal Supply and Services (FSS) to deviate from a Federal specification before it is used in a solicitation, amendment, or contsact modification. Prior to requesting a deviation, the contracting officer shall reject any deviation request that is similar to a deviation which formed the basis for the rejection of an otherwise low bid under the solicitation. The contracting officer shall consider the following factors prior to forwarding a deviation request for evaluation:

(1) The impact that it might have on the ability of other offerors to furnish the item.

(2) The impact that it might have on future solicitations to be issued by the procuring contracting officer (PCO).

(3) Whether the item is the subject of a protest, is under litigation, or is sensitive or controversial.

(4) The timeliness of the deviation request.

(5) The urgency of the requirement.

(6) Alternatives available to the Government other than accepting nonconforming supplies, (e.g., extending due dates upon receipt of adequate consideration, terminating the contract and reprocuring).

(b) A contracting officer's request to deviate from a Federal specification shall include the following information:

(1) A statement describing the deviation.

(2) A justification.

(3) A recommendation for revising or amending the specification, if appropriate.

(4) The effect of the deviation on the form, fit, or function of the contract item, if known.

(5) The contractor's written submission advising the Government of the cost savings that would accrue to the contractor and to the Government if the request is granted.

(c) The procuring contracting officer (PCO) is responsible for authorizing or rejecting the deviation request after obtaining appropriate input. The administrative contracting officer (ACO) may be delegated the responsibility of coordinating the review of the request and making a recommendation to the

PCO. The PCO's determination shall be based upon the following:

(1) The specification manager's evaluation of the request, including:

(i) The effect granting the deviation would have on the form, fit or function of the item.

(ii) The adequacy of the proposed monetary consideration.

(iii) The contractor's cost savings accruing as a result of the deviation.

(2) A conclusion that granting the request is clearly advantageous to the Government.

(3) Whether conforming supplies can be obtained without jeopardizing the Government's supply position.

510.007-71 Notice of determination.

(a) The contracting officer submitting the request shall be promptly advised in writing by the ACO/specification manager as to the acceptability of the request.

(b) Any resultant amendment of the terms of solicitation shall be accomplished using Standard Form 30, Amendment of Solicitation/Modification of Contract, and shall be sent to all offerors.

(c) Any resultant modification of the terms of the contract shall be made by using SF 30, Amendment of Solicitation/Modification of Contract.

510.011 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.210-70, Standard References, in solicitations and contracts for construction services that:

(1) Cite documents or publications that are not furnished with the solicitation, or

(2) Incorporate documents or publications by reference.

(b) The contracting officer shall insert the clause at 552.210-71 Reference to Specifications in Drawings, in solicitations and contracts if Federal specifications which involve drawings are cited.

(c) The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.210-72, Acceptable Age of Supplies, or the clause at GSAR 552.210-73, Age on Delivery, in solicitation and contracts if the contractor will be required to furnish shelf-life items within a specified number of months from the date of manufacture or production of the supplies. (See Section 101-27.206-2 of the Federal Property Management Regulation.) The Acceptance Age of Supplies clause at GSAR 552.210-72 should be used when the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. The Age on Delivery clause at GSAR 552.210-73 should be used when the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(d) [Reserved]

(e) The contracting officer shall include the provision at 552.210-74, Brand Name or Equal, in solicitations for which a brand name or equal purchase is used.

(f) The contracting officer shall include the clause at 552.210-75, Marking, in solicitations and contracts for supplies when the contract amount is expected to exceed the small purchase limitation.

(g) The contracting officers shall insert the clause at 552.210-76, Charges for Marking, in solicitations and contracts that include the clause in 552.210-75 or a similar clause.

(h) The contracting officer shall include the clause at 552.210-77, Preservation, Packaging and Packing, in solicitations and contracts for supplies when the contract amount is expected to exceed the small purchase limitation. The contracting officer may include the clause in contracts awarded through small purchase procedures when appropriate.

(i) The contracting officer shall insert a clause substantially the same as the clause at 552.210-78, Charges for Packaging and Packing, in solicitations and contracts for supplies that are to be delivered to GSA supply distribution facilities.

(j) The contracting officer shall include the clause a 552.210-79, Packing List, in solicitations and contracts for supplies including small purchases.

[49 FR 10815, Mar. 22, 1984, as amended at 51 FR 23061, June 25, 1986]

510.070 Specifications.

510.070-1 Exceptions to mandatory use of Federal specifications.

When an interim Federal specification exists for an item that is also in a Federal specification, contracting activities shall use the interim Federal specification if it is more suitable. In the absence of a Federal specification, an interim Federal specification, if any, shall be used.

[51 FR 23061, June 25, 1986]

510.070-2 Optional use of interim Federal specifications.

Buying offices shall use interim Federal specifications instead of Federal specifications whenever practical, under 510.070-1. When a contracting activity finds an interim Federal specification is not practical, or that changes are desirable, the specification manager shall be notified in writing of the recommended changes.

510.070-3 Use Federal or interim Federal specifications and standards.

(a) Federal or interim Federal specifications and standards shall be incorporated by reference in solicitations. The reference shall identify the specifications or standard by series, i.e., Federal, military, or departmental (e.g., Forest Service), followed by the number and date. (The specification number includes the revision indicator.) Amendments shall be identified, e.g., Federal Specification PPP-B-636G, dated February 17, 1972, and Interim Amendment 1, dated August 30, 1972.

(b) Canceled or superseded specifications, or standards shall not be used.

(c) When Federal or interim Federal specifications and standards are cited in the solicitation, the provision(s) and/or clause(s) prescribed in FAR 10.011 and 510.011 of this chapter shall be used.

510.070-4 Other than Federal and interim Federal specifications.

(a) When the services or staff offices issue guide specifications that apply to the contracting offices within an organization, the head of the service or staff office may establish the review procedures for deviation requests.

(b) The contracting officer shall analyze requests for deviations in accordance with the requirements outlined in 510.007-71.

510.070-5 Deviations from GSA stock or Federal Supply Schedules.

41 CFR 101-26.100-2 of the Federal Property Management Regulations (FPMR) instructs agencies on submitting requests to deviate from the requirement to use items available from GSA stock or from Federal Supply Schedules and provides that such requests be submitted to the Assistant Administrator, Office of Federal Supply and Services (F), for approval.

510.071 Standards.

The provisions of 510.070-1 and 510.070-2 relating to mandatory use of Federal specifications and requests to deviate from Federal specifications also apply to Federal standards.

PART 511—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

Sec.
511.001 Definitions.
511.003 General.
511.070 Solicitation provision and contract clause.
511.070-1 Solicitation provision.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10817, Mar. 22, 1984, unless otherwise noted.

511.001 Definitions.

"Commercial item description" (CID) is a simplified product description that describes by design, function, and/or performance the characteristics of available, acceptable, commercial supplies.

511.003 General.

(a) The specification manager with advice from the contracting officer, if necessary, shall determine if inclusion of a CID in a solicitation is the most appropriate way of describing the Government's needs.

(b) When the CID consists of only the minimum salient characteristics of the commercially available supplies (e.g., general requirements, test procedures), a commercial item certification shall be included in the solicitation. (See 511.070-1.) Because the certification provision supplements and replaces the quality assurance provisions, the certification must be obtained to represent that the supplies being offered are of standard commercial quality.

(c) For CID's that incorporate specific salient characteristics including performance standards, packaging and packing requirements, quality assurance provisions (e.g., visual examination, sampling plans, test methods) the commercial item certification is not required. In this instance, the CID is the sole basis of determining whether the item meets the Government's needs.

511.070 Solicitation provision and contract clause.

511.070-1 Solicitation provision.

The contracting officer shall include the certification provision at 552.211-70, Commercial Item Certification, in solicitations for supplies when a basic or broad description of a standard commercially available product is used to describe the requirement.

PART 512—CONTRACT DELIVERY OR PERFORMANCE

Subpart 512.1—Delivery or Performance Schedules

Sec.
512.101 General.
512.102 Factors to consider in establishing schedules.
512.103 Supplies or services.
512.104 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10818, Mar. 22, 1984, unless otherwise noted.

Subpart 512.1—Delivery or Performance Schedules

512.101 General.

(a) Normally, time of delivery provisions in solicitations and resultant contracts, except multiple-award schedules, shall be stated as "required" time of delivery (or shipment), expressed in specific periods from receipt by the contractor of a notice of award (or receipt of a delivery order under indefinite delivery type contracts). In multiple-award schedule solicitations delivery times shall usually be stated as "desired" time of delivery, and offerors shall indicate in the solicitation a definite number of days within which delivery will be made.

(b) Information shall be included in the contract file to justify unusually short time of delivery requirements. This is particularly important where the time specified is so short that it may limit competition and possibly result in higher prices. Examples of circumstances providing such justification are:

(1) Furniture is required in a short time to outfit quarters scheduled for occupancy on a specific early date,

(2) Construction material is required to meet predetermined job progress schedules, and

(3) Supplies are required at a port to meet scheduled ship sailings for overseas destinations. The contracting officer must be satisfied that the requisitioning office has justified such unusually short time of delivery.

(c) When a portion of the total delivery is needed early, consideration should be given to requiring that portion by the required date and the balance later. Determine whether the portion required early and the balance should be included as separate items in the same solicitation or whether the two portions should be procured under separate solicitations.

(d) Delivery times for indefinite delivery type contract solicitations shall be carefully calculated to ensure that they reflect the most advantageous terms to the Government without imposing an unreasonable burden on potential contractors.

(e) When a particular solicitation contains a mixture of items that require substantially different times for delivery, the delivery periods should be set forth separately and items with similar delivery time requirements should be grouped according to delivery times in the solicitation.

(f) In negotiations for multiple awards, secure the best possible delivery time regardless of the "desired" delivery time(s) in the solicitation. For example, some offers comply with the Government's desired delivery time but others cite delivery times which are substantially shorter. The former should be questioned and negotiated to bring them closer in line with the latter. Variable delivery time offers (e.g., 30-90 days) should be negotiated to keep the timespan to a munimum. If the span applies to several items or several quantity breaks for one item, the items or item quantity breaks should be segregated into smaller groups which can be assigned more specific delivery times.

512.102 Factors to consider in establishing schedules.

(a) In addition to the requirements of FAR 12.102, the contracting officer shall, when determining time of delivery or performance, consider the circumstance where lengthy testing is involved and the time for completion of tests cannot be properly estimated.

(b) In making a determination, the contracting officer should also consider use of the contract clauses prescribed by FAR 12.104.

512.103 Supplies or services.

When the contract delivery date is contingent upon the date the contractor received notice of award, one of the following methods, as appropriate, shall be used to provide evidence of the actual date the notice of award was received:

(a) Mail the notice of award using certified mail with return receipt requested (see FAR 12.103(d)).

(b) Hand deliver the notice of award to the contractor (for example by contracting officer quality control representative) and obtain a dated receipt therefor.

512.104 Contract clauses.

(a) The contracting officer may insert one of the time of delivery clauses at 552.212-1, Time of Delivery, in solicitations and contracts, or may develop a clause substantially as shown to set forth a required delivery schedule.

(b) The contracting officer may insert one of time of shipment clauses at 552.212-70, Time of Shipment, in solicitations and contracts, or may develop a clause substantially as shown to set forth a required time of shipment.

(c) The contracting officer shall insert one of the clauses at 552.212-71, Notice of Shipment, in solicitations and contracts, when contractors are required to furnish notice of shipment.

(d) The contracting officer shall insert one of the clauses at 552.212-72, Availability for Inspection and Testing and Shipment/Delivery, in solicitations and contracts for supplies when lengthy testing is involved and the time required for completion of these tests cannot be predetermined.

(e) The contracting officer shall insert one or both of the clauses at 552.212-73, Parts and Services, in solicitations and contracts whenever an AID requisition (P10/c, P10/t, PA/PR) specifies the need for assembling, servicing, and maintenance of equipment to be performed by the contractor.

(f) The contracting officer shall insert the clause at 552.212-74, Non Compliance with Contract Requirements, in solicitations and contracts for construction services when the contract amount is expected to exceed the small purchase limitation.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 513—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 513.1—General

Sec.
513.106 Competition and price reasonableness.
513.106-70 Unusual and compelling urgency procurements.
513.107 Solicitation and evaluation of quotations.

Subpart 513.2—Blanket Purchase Agreements

513.203 Establishment of Blanket Purchase Agreements (BPA).
513.203-1 General.
513.204 Purchases under Blanket Purchase Agreements.

Subpart 513.3—Fast Payment Procedure

513.301 General.

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513.403 Agency responsibilities.
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Subpart 513.5—Purchase Orders

513.501 General.
513.505 Purchase order and related forms.
513.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
513.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

Subpart 513.70—Certified Invoice Procedure

513.7001 Certified invoice procedure.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10819, Mar. 22, 1984, unless otherwise noted.

Subpart 513.1—General

513.106 Competition and price reasonableness.

(a) *Purchases not over $1,000.* Purchases not exceeding $1,000 may be accomplished in accordance with GSAR 513.70 using the certified invoice procedure.

(b) *Purchases over $1,000.* Solicitation of at least three sources in accordance with FAR 13.106(b)(5) may be considered to promote competition to the maximum extent; provided, there is a reasonable expectation of obtaining quotations that will be competitive in terms of market price from two or more of the sources. If the contracting officer determines there is no reasonable expectation of obtaining two or more quotations, additional (more than three) sources should be solicited. If only one response is received, the purchase may be made provided the price is reasonable and the contractor is responsible.

(c) *Oral solicitation.* Quotations may be solicited orally under the circumstances described in FAR 13.106(b)(2) unless—

(1) A service contract, which will include a wage determination issued by the Department of Labor under the Service Contract Act, is involved; or

(2) The proposed acquisition is estimated to be $10,000 and above and must be publicized in the Commerce Business Daily.

(d) *Source lists.* Contracting activities may supplement small purchase source lists established in accordance with FAR 13.106(b)(4), through the use of trade publications, *Thomas Register*, and other comparable publications.

(e) *Data to support small purchases.*

(1) When other than the lowest quotation is accepted, the reason(s) for rejecting any lower quotation shall be entered in the purchase case file.

(2) The GSA Form 2010, Small Purchases Tabulation Source List/Abstract, shall be used to document written quotations received and to document oral quotations of $1,000 or more. The form may be used on an optional basis for documenting oral quotations under $1,000. If the GSA Form 2010 is not used, a record shall be maintained to document the following information, as a minimum:

(i) Name and address of the supplier solicited.

(ii) Name of the supplier's representative.

(iii) Prices quoted, including discounts.

(iv) Description of supplies or services for which the quote is provided.

(v) Name of the Government employee soliciting the quotation.

(vi) Date of the conversation.

[49 FR 10819, Mar. 22, 1984, as amended at 50 FR 10044, Mar. 13, 1985]

513.106-70 Unusual and compelling urgency procurements.

When an item or service is needed in a situation of unusual and compelling urgency, competition may be solicited by having prospective sources visit the site and by orally informing them, together, of the exact requirements, to enable the sources to prepare quotations while the written specification is being prepared by the Government for inclusion in the contract. Unusual and compelling urgency, for the purpose of this subsection, includes situations which, if not corrected immediately, will result in unnecessary expenditure of funds, property damage, personal injury, serious loss of agency efficiency in operations, or interruption of agency functions, any of which could be avoided by immediate corrective action.

[50 FR 10044, Mar. 13, 1985]

513.107 Solicitation and evaluation of quotations.

GSA Form 3188, Request for Quotation, is authorized for use by the Office of Federal Supply and Services with the FSS-19 system instead of the Standard Form 18, Request for Quotations.

[50 FR 10044, Mar. 13, 1985]

Subpart 513.2—Blanket Purchase Agreements

513.203 Establishment of Blanket Purchase Agreements (BPA).

513.203-1 General.

(a) *Provisions required.* Blanket purchase agreements (BPA's) must be documented on a purchase order form or on a GSA 3521, Blanket Purchase Agreement. In addition to the requirements of FAR 13.203-1(j), each blanket purchase agreement should when appropriate, specify the geographic area to be served under the BPA.

(b) *Requesting deliveries.* Only the contracting officer (CO) and officials authorized by a CO and designated in the BPA are permitted to request deliveries. Employees designated in the BPA to place orders, who are not warranted contracting officers, may not place orders of $150 or more without first obtaining the approval of a warranted contracting officer. Delivery (call) orders will be made by telephone or in person. The GSA Form 2877, Non-Depot Item Requisition/Order/Receiving/Payment Record, is authorized for use by the Federal Supply Service in placing orders against BPA's for customer supply center items that are not available from Government supply depots. Before placing calls against the BPA, each requirement must be screened for availability from mandatory sources of supply. Necessary controls must be maintained by the person placing call orders under the BPA to ensure that any limitation stated therein is not exceeded. The BPA identification and requisition number, if any, should be specified each time a delivery is requested.

(c) *Delivery or service tickets.* Each delivery ticket, in addition to the requirements of FAR 13.203-1(j)(6), must contain the requisition number, if any, and the name of the person placing the call. Upon receipt of items or services ordered, the delivery ticket must be signed and dated by the individual receiving them, and one copy of the delivery ticket provided to the supplier, and one copy retained by the receiving office.

(d) *Invoicing.* One of the invoicing statements outlined in FAR 13.203(j)(7) must be included in the BPA. If a supplier will not accept a BPA with any of the FAR invoicing statements, the contracting officer is authorized to deviate from FAR 13.203(j)(7) in order to permit the submission and payment of invoices for each delivery under the BPA. Before including such a statement in a BPA, the contracting officer must make every effort to get the supplier to accept one of the FAR invoicing statements. The BPA file should document the contracting officer's efforts and the suppliers refusal to accept the

FAR invoicing statements when the BPA is written to authorize submission and payment of invoices for individual deliveries.

(e) *Processing invoices.* Invoices must be time-stamped by the ordering office to indicate the date of receipt. Unless the BPA provides for the accumulation of invoices as outlined in FAR 13.203(j)(7)(iii), the ordering office must forward the invoice to the appropriate Finance Division for payment within 5 workdays of receipt of the invoice or acceptance of the supplies or services, whichever is later. If the BPA provides for accumulation of invoices by the ordering office for a specified period, the ordering office must forward the accumulated invoices to the appropriate Finance Division for payment within 5 workdays after the specified period for accumulation. All invoices should be marked to indicate that purchases were made under a BPA.

[51 FR 45893, Dec. 23, 1986, as amended at 51 FR 45896, Dec. 23, 1986]

513.204 Purchases under Blanket Purchase Agreements.

(a) Individual purchases made against BPA's shall not exceed $5,000.

(b) Individual purchases under BPA's may exceed the $5,000 threshold in (a) above and the small purchase threshold (FAR 13.101) if the BPA has been established in accordance with FAR 13.203-1(f).

[50 FR 10044, Mar. 13, 19[illegible]]

Subpart 513.3—Fast Payment Procedure

513.301 General.

The fast payment procedures outlined in FAR Subpart 13.3 shall not be used by GSA contracting activities.

Subpart 513.4—Imprest Fund

513.403 Agency responsibilities.

Imprest fund cashiers must be designated and will function in accordance with HB, Accounting Users Guide—Imprest Fund and Travelers Checks (COM P 4268.1) and the requirements of FAR Subpart 13.4.

[51 FR 45894, Dec. 23, 1986]

513.404 Conditions for use.

The per transaction spending limitation for cash payments made through imprest funds for purchases charged to the Federal Buildings Fund (192X) is $500. The per transaction limitation for all other payments made through the imprest funds is $150 ($300 under emergency conditions). In addition, the conditions for use of imprest funds outlined in FAR 13.404 (b) and (c) apply.

[51 FR 45894, Dec. 23, 1986]

513.405 Procedures.

The SF 1164, Claim for Reimbursement for Expenditures on Official Business, or SF 1165, Receipt for Cash—Subvoucher, will serve as the authorized purchase requisition referred to in FAR 13.405(a) for purchases made by offices maintaining their own imprest funds, e.g., Public Building Service Field Offices. Purchase requisitions such as the GSA Form 49, Requisition for Equipment, Supplies or Services, may be used if required by contracting activity directives. If the GSA Form 49 is used, it must be endorsed "Payment to be made from imprest fund."

[51 FR 45894, Dec. 23, 1986]

Subpart 513.5—Purchase Orders

513.501 General.

The Finance Divisions will not accept facsimile signatures on machine-produced purchase orders to obligate funds. An original (carbon copy but not photocopied) handwritten signature is required for obligation purposes on individual purchase orders or an original handwritten signature on a listing that references individual machine-produced purchase orders and dollar amounts.

[51 FR 45894, Dec. 23, 1986]

513.505 Purchase order and related forms.

513.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) Unless another form is prescribed, the GSA Form 300, Order for

Supplies and Services, must be used instead of the OF 347, Order for Supplies or Services, when making purchases payable through the National Electronic Accounting and Reporting (NEAR) System. The GSA Form 300 must be prepared and processed in accordance with the instructions at GSAR 553.370-300-I.

(b) The GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order, shall be used instead of the OF 347, Order for Supplies or Services, when making purchases in connection with the maintenance, servicing or repair of GSA fleet management vehicles.

(c) The GSA Form 3186, Order for Supplies or Services, shall be used instead of the OF 347, Order for Supplies or Services, when making purchases through the FSS-19 system.

[50 FR 51394, Dec. 17, 1985, as amended at 51 FR 45894, Dec. 23, 1986]

513.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

(a) *General.* Use of the Standard Form 44, Purchase Order-Invoice-Voucher, will not serve the best interest of either the Government or business when the accounting system of the seller requires production of an invoice as a matter of routine. In these cases, whichever of the other authorized methods of making small purchases is most appropriate shall be used. Whenever possible, within the dollar value limitations of each method, preference shall be given to the use of imprest funds and blanket purchase agreements. (See FAR Subpart 13.4 and GSAR Subpart 513.2 of this chapter.)

(b) *Authorization for using the form.* Where necessary, designated employees may be authorized to make small purchases under $150 using Standard Form 44 in accordance with this subpart. Purchases of $150 or more using SF 44 may be made only by contracting officers.

(c) *Issuance of books from stock.* Issuance of books of SF 44 from stock shall be made only to contracting directors or to their designees. These officials shall be responsible for the custody and issuance of the books to the users and shall maintain a simple card record for each book issued.

[49 FR 10819, Mar. 22, 1984, as amended at 51 FR 45894, Dec. 23, 1986]

Subpart 513.70—Certified Invoice Procedure

513.7001 Certified invoice procedure.

(a) When advantageous to the Government, supplies or services may be acquired on the open market from local suppliers at the site of the work or use point using vendors' invoices instead of purchase orders. Certified invoice procedures may not be used to place orders under established contracts unless specific authorization of their use is included in the contract document.

(b) Such purchases shall be effected only in accordance with FAR Part 13 and GSAR Part 513, subject to the following:

(1) The amount of any one purchase is $2,000 or less.

(2) A purchase order is not required by either the supplier or the Government.

(3) Appropriate invoices can be obtained from the supplier.

(c) The items to be purchased shall be domestic source end products, except as provided in FAR Subpart 25.1. For special rules governing purchases of hand and measuring tools and stainless steel flatware see 525.105-70, 525.105-71, and 525.105-72

(d) Use of the certified invoice procedure does not eliminate the requirements in FAR Part 13 and GSAR Part 513 of this chaper to:

(1) Reserve small purchases for small business in accordance with Pub. L. 95-507, or document the file;

(2) Solicit competitive quotations in accordance with FAR 13.106(a);

(3) Certify that the quality and quantity of items/services furnished are in accordance with the verbal agreement made with the vendor;

(4) Document the record in accordance with FAR 13.106(c) and GSAR 513.106(e).

(e) The sclicitation of quotations may be performed by authorized personnel without contracting officer warrants; however, the placement of any orders of $150 or more must be approved in advance by a warranted contracting officer. The approval shall be in writing unless geographic distances make it impracticable to obtain a written approval on the GSA Form 2010 or other documentation in which case telephonic approval may be obtained and a notation of the approval recorded.

(f) Each contracting officer using this purchasing technique shall require the supplier to immediately submit properly prepared invoices which itemize property or services furnished.

(g) Upon receiving the invoice, the contracting officer shall time-stamp the invoice to indicate the date of receipt, verify the arithmetic accuracy of the invoiced amount, and verify that the supplies and/or services have been received and accepted. The contracting officer shall obtain a certification of receipt and acceptance from the individual that actually inspected and accepted the supplies and/or services before certifying the invoice and forwarding to the appropriate Finance Division for payment. Supplies and/or services should be inspected and accepted or rejected within 5 workdays of delivery. The invoice must be forwarded to the appropriate Finance Division for payment within 5 workdays after receipt of the invoice or acceptance of the supplies and/or services, whichever is later. Before forwarding the invoice to Finance, the contracting officer shall place the following statement on the invoice along with the gummed ACT label and accounting information:

"I certify that these goods and/or services were received on ____________ (date) and accepted on ____________ (date). Oral purchase was authorized and no confirming order has been issued."

____

Signature of Contracting Officer

____

Print the Contracting Officer's name

____

Date Approved

[49 FR 10819, Mar. 22, 1984, as amended at 50 FR 10045, Mar. 13, 1985; 51 FR 45894, Dec. 23, 1986]

PART 514—SEALED BIDDING

Subpart 514.2—Solicitation of Bids

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514.471 Multiple bidding.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10820, Mar. 22, 1984, unless otherwise noted.

Subpart 514.2—Solicitation of Bids

514.201 Preparation of invitation for bids.

(a) Refer to GSAR 514.270 for information on specifying a minimum bid acceptance period.

(b) Notices such as those prescribed in GSAR 514.201-1 and GSAR 514.201-2 may be included on GSA Form 1602, Notice Concerning Solicitation.

[50 FR 50170, Dec. 9, 1985]

514.201-1 Uniform contract format.

All solicitations shall include the following notice:

The information collection requirements contained in this solicitation/contract, that are not required by regulation have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163.

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10045, Mar. 13, 1985]

514.201-2 Part I—The schedule.

All solicitations that contain the Standard Form 33, Solicitation, Offer and Award should include the following cautionary notice:

"Offerors are reminded that block 13 of the Standard Form 33, Solicitation, Offer and Award, is to be used to offer prompt payment discounts. Payment terms are set forth in the Payment Due Date clause of this solicitation. Offerors are cautioned against inserting any statement in block 13 which indicates that payment is due sooner than the time stipulated in the Payment Due Date clause. **EXAMPLE**: When the Payment Due Date clause indicates payment is due in 30 days and the offeror inserts "NET 20". Inserting this type of statement will cause the offer to be rejected as nonresponsive."

[50 FR 50170, Dec. 9, 1985]

514.201-6 Solicitation provisions.

(a)-(b) [Reserved]

(c) The contracting officer shall insert the clause at GSAR 552.214-73, "All-or-None" Offers, in solicitations when all-or-none offers will be considered.

[50 FR 10045, Mar. 13, 1985, as amended at 52 FR 6562, Mar. 4, 1987; 53 FR 30842, Aug. 16, 1988]

514.201-7 Contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.214-75, Progressive Awards and Monthly Quantity Allocations, in solicitations for stock replenishment contracts when it is determined that individual contractors may be unable to furnish the Government's monthly requirements, and that it will be expedient to make progressive awards.

(b) The contracting officer shall insert the clause at GSAR 552.215-70, Examination of Records by GSA, in solicitations and contracts subject to audit, as indicated in GSAR 501.671-3.

[50 FR 10045, Mar. 13, 1985]

514.201-70 Request for brand name information—limitation.

(a) When an item is described in a solicitation by a formal specification or a detailed purchases description (other than a brand name or equal purchase description), the solicitation shall not require or request that bidders specify the brand names of the products they propose to furnish. However, brand name information may be requested in the following situations:

(1) Items for which descriptive literature is requested in accordance with FAR 14.202-5.

(2) Items for which preproduction samples or test are required.

(3) Procurements of qualified products.

(b) This limitation also applies to acquisitions described in FAR 19.502-4 (Procurements set aside for small business) and FAR Subpart 25.3 (Balance of Payments Program).

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10045, Mar. 13, 1985]

514.201-71 Fire or casualty hazards, or safety or health requirements.

(a) Specifications covering electrical equipment, building materials, etc., which involve fire or casualty hazards, or safety or health requirements, normally contain a clause requiring conformance to the standards of nationally recognized technical societies, associations, or laboratories, or other GSA-approved testing laboratories, regarding fire and casualty hazards, explosion protection, or safety or health requirements.

(b) When a specification is not available or the specification to be used does not include a clause such as that described in (a) of this section 514.201-71, and it is believed that such a clause should be included in the current procurement, technical advice shall be obtained from the appropriate program or technical office. If the contracting officer then determines that the matter should be covered, an appropriate clause shall be included in the solicitation. The clause shall cite the nationally recognized standards requiring compliance. If several such standards are available, the clause shall cite all standards that are acceptable.

[50 FR 36084, Sept. 5, 1985, as amended at 52 FR 6562, Mar. 4, 1987]

514.201-72 Distribution of bidding documents.

(a) Principal construction subcontractors may obtain copies of bid doucments by: (1) Reouesting in writing and (2) paying the required bid document charges or deposits, as provided in 536.302-70.

(b) When copies are not available, subcontractors shall be informed where bid documents may be reviewed.

514.202 General rules for solicitation of bids.

514.202-4 Bid samples.

Paragraphs (a) through (f) of this section are applicable when it has been determined, in accordance with FAR 14.202-4, that bidders will be required to furnish bid samples. If it is determined that bid samples will not be required, but the applicable specification cited in the solicitation requires bid samples, a provision shall be included in the solicitation in accordance with FAR 14.202-4(f)(2).

(a) *Solicitation requirements.* A provision or clause containing the information described in FAR 14.202-4(e), and other pertinent details as indicated below, shall be in solicitations in conjunction with the provision at FAR 52.214-20.

(1) Samples must be from the production of the manufacturer whose products will be furnished under the resultant contract. In this connection, if it is determined by the contracting officer, in coordination with the specification and quality assurance activities, to permit bidders to reapply samples furnished under a previous solicitation (see FAR 14.201-6(o)(2) and FAR 14.202-4(f)(1)), FAR 52.214-20, Alternate II, shall be used, not Alternate I.

(2) Bidders shall be required to use GSA Form 434, Sample Record Sheet,

copies of which shall be furnished with each solicitation.

(3) Normally, only subjective characteristics of bid samples will be listed in the solicitation. Objective characteristics may be listed when it has been determined, on the basis of past experience or other valid considerations, that examination of such characteristics is essential in the procurement of an acceptable product, and that it is in the best interest of the Government to require prospective contractors to exemplify such characteristics as a matter of responsiveness, rather than as a matter of responsibility (in which case an opportunity is given for a bidder or contractor to correct noted deficiencies). When both types of characteristics are listed in the solicitation, they shall be listed separately under the headings "Subjective Characteristics" and "Objective Characteristics."

(4) Because of variations in circumstances and wording as between different commodities, no standard provision can be prescribed for use in all solicitations. However, the provision at GSAR 552.214-76, Bid Sample Requirements, is provided as an example. This provision may be used in solicitations substantially as shown, or it may be changed, or different provisions may be written to fit the circumstances of the procurement.

(b) *Receipt and safeguarding of samples.* (1) Bid samples shall be received and safeguarded in a sample room. The term "sample custodian," as used herein, refers to sample room personnel.

(2) Bid samples must be received before bid opening to be considered for award. Samples are to be promptly stamped or tagged upon receipt by the sample custodian indicating the date and hour received. The sample custodian shall record whether the samples were sent by regular, registered, or certified mail, or by other delivery methods. Each sample container is to be accompanied by GSA Form 434, Sample Record Sheet, included as part of the solicitation. The regulations concerning late bids (FAR 14.304) also apply to samples received after the time set for receipt of bids.

(3) Bid samples shall be carefully protected against loss, damage, or pilferage. Each sample shall be recorded and tagged showing the firm's name and address, solicitation number, noun name, national stock number (NSN), and date of receipt. If samples or their containers arrive damaged, the sample custodian shall note the condition of the container upon receipt, and request a quality assurance specialist (QAS) to verify the actual condition of the samples involved.

(c) *Evaluation of samples.* (1) Bid samples will not normally be inspected until the bidder is being considered for award on the article(s) represented by the sample. Samples received in the Central Office shall be evaluated by a team consisting of representatives from the contracting, quality assurance, and specification management activities. In the regional offices, samples shall be evaluated by the contracting activity and the quality assurance activity. When laboratory support is required, the quality assurance specialist (QAS) will arrange for the testing, and the samples shall be hand-carried to and from the laboratory, or sent by a protected method.

(2) The samples will be evaluated with respect to the characteristics listed in the solicitation, and a written record of the findings of the evaluation shall be made. If the samples do not meet the required characteristics, the bid shall be rejected with respect to the items represented by the deficient sample(s). If the samples are found to conform to the characteristics listed in the solicitation, further determination of the prospective contractor's responsibility shall be made in accordance with agency procedures.

(d) *Other deficiencies noted.* (1) Although bid samples may be rejected only on the basis of the characteristics listed in the solicitation, the QAS may examine the samples for other specification requirements for the purpose of assisting the quality assurance activity in the region where the bidder's plant is located. A report of the evaluation of the samples, showing results with respect to all characteristics examined, shall be furnished promptly to the contracting officer.

(2) If the bid sample has been found to conform to all of the characteristics listed in the solicitation, but found deficient with respect to one or more of the unlisted characteristics, a preaward survey report shall be requested as provided in GSAR 509.105-1(c). A copy of the sample evaluation report shall be attached to the Standard Form 1404, Preaward Survey of Prospective Contractor-Technical which shall include a request that special attention be given to the prospective contractor's ability (notwithstanding the deficiencies noted with respect to the characteristics not listed in the solicitation which were evaluated) to produce supplies fully conforming to applicable specifications. For example, can the noted deficiencies be corrected by fairly simple production or process control adjustments, or would expensive and time-consuming retooling be involved? The preaward survey report shall include a specific statement regarding the prospective contractor's ability or inability to correct each noted deficiency in objective characteristics as well as an overall appraisal of his capability.

(i) If the preaward survey report is not favorable, a determination of nonresponsibility shall be made based upon the facts and evaluation contained in the report together with any other evidence that may be obtained in a given case bearing on the bidder's inability to meet the standards of responsibility in FAR Subpart 9.1.

(ii) If the preaward survey report is favorable, award may be made, if otherwise proper, to the low bidder whose samples conform to the characteristics listed in the solicitation. Concurrently with award, the contracting officer shall specifically, in writing, call to the attention of the contractor, the inadequacies of the sample with respect to unlisted characteristics and advise him of his responsibilities to furnish items conforming to all of the requirements of the specification. A copy of the letter shall be furnished to the appropriate quality assurance activity for use when making subsequent inspections.

(e) *Handling and disposition of approved samples.* (1) Upon award of a contract, the contracting officer shall forward a copy of GSA Form 6419, Transmittal of Contract Award Data, or a similar memorandum of record, to the sample custodian who shall tag the approved samples showing the contract number and the contract period. When there is only one sample, it shall be hand-carried or sent by an appropriate means of transportation to the manufacturing plant marked to the attention of the QAS. If there are two identical samples, one sample shall be retained in the bid sample room until performance is completed and the other shall be forwarded as stated above. The sample shall normally have the tag secured by wire wth a lead seal except when other means of identification are more appropriate. The sample custodian shall notify the Quality Assurance Branch of sample shipment by furnishing a copy of GSA Form 6334, Transmittal of Approved Samples of Items Under Contract, or a similar memorandum of record.

(2) Upon completion of all deliveries/shipments and inspections under the contract, the samples shall be returned to the supplier at the supplier's expense if so indicated on GSA Form 434, Sample Record Sheet. Other samples are to be treated as Government property for use or disposal. In those instances when the contracting officer has indicated that they may be reapplied to a succeeding solicitation, the sample shall be retained in the bid sample room.

(3) If the contracting officer anticipates that there may be a future claim regarding a contract, the bid samples shall be retained until the claim is resolved.

(f) *Disposition of other samples.* (1) Bid samples rejected or untested shall be returned to the supplier at the supplier's expense, if so indicated on GSA Form 434, Sample Record Sheet. The others will be treated as Government property for use or disposal. (See FAR 14.202-4(h).)

(2) Bid samples determined to be received late in accordance with FAR 14.304 shall be held until awards are made and returned to the offeror, freight collect, unless other disposition is requested or agreed to by the bidder.

[50 FR 10046, Mar. 13, 1985]

514.203 Methods of soliciting bids.

514.203-1 Mailing or delivery to prospective bidders.

(a) A copy of each solicitation shall be provided to the requisitioning office.

(b) Active bidders (current contractors and bidders that responded to recent similar solicitations) shall be provided with bid sets for the same or similar items. Active bidders' names shall be checked against the bidders mailing list and, if they are not listed, they shall be added.

(c) Contracting activities shall prepare the required address labels or addressed envelopes for the active bidders and furnish them to the local printing and distribution activity.

(d) The distribution of solicitations shall included the quantities required by the Business Service Center in the region where the solicitation originates. Business Service Centers shall advise contracting offices of quantities required for public display, reference, and for filling requests for copies. The approval of the appropriate Contracting Director shall be obtained when it is necessary to vary the normal distribution of bid sets.

(e) At the contracting officer's discretion, the notice in 552.214-74 Solicitation Copies, shall be included in solicitations or on GSA Form 1602, Notice Concerning your Solicitation for Offers, as appropriate.

(f) Contracting officers shall ensure that all amendments to solicitations and related notices are furnished promptly to every addressee previously furnished a solicitation.

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10047, Mar. 13, 1985]

514.204 Records of invitations for bids and records of bids.

Business Service Centers shall submit promptly to the appropriate contracting officer a supplemental list of firms (including addresses) to whom the BSC furnished solicitations. Contracting officers shall furnish these firms with applicable amendments or supply the Business Service Center with amendments for distribution.

514.205 Solicitation mailing lists.

514.205-1 Establishment of lists.

(a) Solicitation mailing lists shall be established in accordance with FAR 14.205. Contracting officers within FSS shall use the computerized central solicitation mailing list maintained by Region 8 for supplies and services for all procurements expected to exceed the small purchase limitations. Other GSA services/offices may maintain local lists. Services/offices that maintain local mailing lists shall inform the GSA Business Service Center of the list and provide related information regarding the list.

(b) Inquiries from or for business firms requesting inclusion on solicitation mailing lists shall be referred to the GSA Business Service Center serving the geographic areas in which the firms are located. Business Service Centers will assist firms to be included on the proper GSA mailing lists and will provide prospective bidders with necessary application forms and related information.

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10047, Mar. 13, 1985; 51 FR 16691, May 6, 1986]

514.205-2 Removal of names from solicitation mailing lists.

(a) To remove firms from solicitation mailing list (SML)—

(1) Encircle in black on a copy of the applicable solicitation mailing list the firms to be removed; and

(2) Attach a cover letter listing the solicitation number to which the firm did not respond, the commodity, the issue and closing dates of the solicitation, and the class and mailing list code (MLC) from GSA Form 1382, List of Commodities and Services, and forward to 8BRC for action. The letter should read substantially as follows:

> Please delete the encircled firms which did not respond to solicitation No. — for —, issued —, and opened —, class —, and MLC —.

(3) Unless the addressee requests removal, addresses such as U.S. Congressional Offices and offices in GSA's Central Office should not be removed from the computerized SML.

(b) Only contracting activities having national responsibility for the items or services shall remove firms from the SML. Other contracting activities shall route such lists and letters through the activity having national commodity or service responsibility for concurrence and for forwarding to the Centralized Mailing Lists Services Branch (8BRC) for action.

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10047, Mar. 13, 1985]

514.208 Amendment of invitation for bids.

The date set for bid opening shall be extended when amendments relating to wage determinations issued under the Service Contract Act or the Davis-Bacon Act are issued less than 10 days before the scheduled bid opening date.

[50 FR 10047, Mar. 13, 1985]

514.211 Release of acquisition information.

Access to information concerning the Government cost estimate must be limited to Government personnel whose official duties require knowledge of the estimate. After award, the total amount of the Government estimate may be revealed, upon request, to those firms or individuals who submitted bids. Information on the basis for calculation of the estimate may not be released at any time.

[51 FR 16692, May 6, 1986]

514.270 Bid acceptance period.

514.270-1 Standard Form 33.

(a) The Standard Form 33, Solicitation, Offer and Award, provides for the insertion by bidders of a number of calendar days after bid opening by which their bids must be accepted by the Government. However, FAR 14.201-6(j) authorizes contracting officers to specify a minimum bid acceptance period by including in the solicitation the provision at FAR 52.214-16. A class deviation has been approved for the use of the provision at 552.214-16, Minimum Bid Acceptance period, instead of the provision at FAR 52.214-16.

(b) When the provision at 552.214-16 is used, paragraph (b) of the provision supersedes Item 12 of the SF 33. However, a problem would result if a bidder overlooked the fact that the provision was included in the solicitation, and inserted in Item 12 a figure that was less than that stipulated by the Government in paragraph (c) of the provision. To avoid such problems, the contracting officer shall insert in Item 12 of SF 33 the entries shown below when the provision at 552.214-16 is included in the solicitation.

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214.16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within ____ N/A* calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

*SEE PROVISION 552.214-16

[51 FR 45897, Dec 23, 1986]

514.270-2 Specifying a required bid acceptance period.

(a) *Applicability.* Paragraph (b) of this 514.270-2 applies only to solicitations in which SF 33 is used. However, the guidelines and instructions in paragraph (c) generally apply to all solicitations.

(b) *Use of the provision in 552.214-16.* The 60-day period stipulated in the parenthetical statement in Item 12 of SF 33 is neither a "standard" nor a request to bidders to allow such period. However, most bidders customarily offer a 60-day bid acceptance time, although they rarely offer more than 60 days, and sometimes offer less than that period. Consequently, the provision in 552.214-16 should be used whenever the contracting officer determines (1) that a period of more than 60 days will be needed to finalize award(s), or (2) that a period of 60 days or less will be adequate to complete the award process, but that one or more bidders may specify an acceptance period which is less than the projected time needed to finalize award(s).

(c) *Number of days to be stipulated.* The following guidelines shall be given consideration in determining the appropriate number of days to be stipulated for the acceptance of bids:

(1) A bid acceptance period should be no more than is reasonably necessary for the evaluation of bids and other preaward processing. This does not mean that the period stipulated should reflect the absolute minimum time required for award(s) if there are no unexpected delays. On the other hand, the period stipulated should not be inflated to provide for numerous contingencies that may never arise.

(i) Matters which should be factored into the projected bid acceptance period are those which are known or are anticipated as likely to occur. These predictable matters include evaluation of several bids on numerous line items, complex evaluations requiring the addition of transportation cost factors, laboratory testing of bid samples, on-site inspection of bidders' production facilities, financial reports, obtaining past performance information, or security clearances and EEO clearances. After the evaluation of bids and the determination of the low bidder(s), most of the actions relating to the determination of responsibility can be conducted concurrently.

(ii) Contingencies such as late bids, mistakes in bids, protests, SBA Certificate of Competency requirements, and Walsh-Healy eligibility requirements should not be anticipated in projecting an appropriate bid acceptance period. The procedure of requesting extensions of bid acceptance time (see 514.407-72) is to provide for unexpected delays which may arise during the award process.

(2) The stipulated bid acceptance period should usually be a minimum of 30 days, should be stated in increments of 15 calendar days, and normally should not exceed 90 calendar days.

(i) A period of 30 days should be adequate for the award of contracts under a solicitation covering a few line items if a plant facility report or other similar time-consuming action is not required.

(ii) A period of 45 days should be adequate for the award of contracts under a solicitation covering numerous items and requiring approvals outside of the contracting office (i.e., large dollar-value awards), but not involving plant facility reports, bid sample testing and evaluation, or similar delays.

(iii) A period of 60 days should be considered appropriate for most supply and services contracts requiring a plant facility report and other actions or reports which can be accomplished simultanteously (financial, EEO clearances, bid sample approvals, etc.).

(iv) A period of 75 or 90 days may be reasonable when the determination of the apparent low bidder(s) involves a complex evaluation process (e.g., evaluating f.o.b. origin bids to overseas ports of debarkation), and actions or reports of the type described in the preceding paragraph are also required.

(v) A period exceeding 90 days may be necessary in cases involving security clearances or cost comparisons under OMB Circular A-76.

[50 FR 10047, Mar. 13, 1985, as amended at 51 FR 45897, Dec. 23, 1986]

514.271 Aggregate awards.

[50 FR 10048, Mar. 13, 1985]

514.271-1 General.

(a) *Definition.* An "aggregate award" means an arrangement, stipulated by the Government in the solicitation, whereby two or more separately-priced line items are combined for award to that bidder whose offer will result in the lowest total cost to the Government for all of the line items within the group, without regard to whether the prices offered by the bidder are low on each item.

(b) *Justification for use.* Ordinarily, prices shall be solicited for award on an individual line-item basis. In some cases, however, it may be expendient to combine two or more line items for award in the aggregate. When items are combined for aggregate award, the contracting officer shall include the rationale for establishing an aggregate award formula in the contract file. Examples of situations which may justify the use of an aggregate method of award are set forth below:

(1) When uniformity of design, style, and finish is desired, as in the acquisition of suites of household furniture.

(2) When the articles being acquired will be assembled and used as a unit, and may not be interchangeable if acquired from different manufacturers.

(3) When the demand for certain articles is large, but the demand for other similar articles is not sufficient to attract competitive bids unless awarded in conjunction with the high-demand articles (e.g., various sizes of socket wrenches).

(4) When one location (delivery point) has a large requirement, and another location has a requirement that is too small to individually attract competitive bids.

(5) When it is impractical to award and administer numerous small contracts for similar articles or services.

(c) *Prerequisites for use.* In the absence of strong overriding factors, items shall not be grouped for award in the aggregate unless the following conditions are satisfied. In questionable cases involving a proposed aggregate group (or groups) with an actual or estimated value of $1 million or more, approval of the contacting director shall be obtained before the solicitation is issued.

(1) *Capability of accurately projecting lowest cost.* To determine the lowest cost on an aggregate group of items, it is necessary to extend unit prices by weight factors calculated to reflect the true or proportionate quantities that will be purchased under a resultant contact. Consequently, a realistic determination of the lowest bid is contingent upon the formulation of realistic weight factors. See GSAR 514.271-2, Weighting of items for aggregate award. If weight factors must be based on information that is unreliable, and the results are considered highly conjectural, the price list method described in GSAR 514.272 should be considered.

(2) *Capability of bidders to furnish articles and quantities.* It shall be stated in all solicitations involving items to be awarded on an aggregate basis that to qualify for an award on an aggregate group, a price must be submitted on each item within the group. See GSAR 514.271-3, Grouping of items for aggregate award.

(d) *Method of award provision.* When items will be awarded on an aggregate basis, an appropriate provision shall be included in the solicitation which clearly states the basis on which bids will be evaluated. A statement as described in GSAR 514.271-1(c)(2) shall also be included unless the pricelist method described at GSAR 514.272 is used. The arrangement of items in the Schedule (identification of items to groups) and the language used in the method of award provision must be compatible.

[50 FR 10048, Mar. 13, 1985]

514.271-2 Weighting of items for aggregate award.

(a) The use of accurate weight factors is essential in all solicitations providing for aggregate awards, except for situations where the same weight factor is applicable to all line items in the aggregate group. Their function is to provide a basis for determining which bid will result in the lowest overall cost to the Government for the line items included in the aggregate group(s). When the weight factors used to evaluate bids do not reflect the true ratio of purchase as between the various line items awarded as an aggregate group, the result may be that award is not made at the lowest overall cost to the Government.

(b) Although such language as "lowest total cost to the Government" is used in this regulation and in various GAO decisions regarding the evaluation of aggregate groups of items, it is not so important that actual cost be projected in determining the low bidder; what is important is that relative proportionate cost as between line items within an aggregate group be accurately projected. Consequently, in establishing weight factors to be applied in determining the "lowest total cost to the Government" for an aggregate group of items, it is ratio that is important, rather than actual quantities.

(c) Estimated quantities that apply to indefinite quantity or requirements contracts may be reduced to smaller numbers by a common denominator to facilitate the computations involved in evaluating bids. However, the rounding off of numbers sacrifices precision, and the practice is not encouraged.

(d) The actual purchase quantities shall be used as weight factors for definite quantity acquisitions. The reason for this is that a bidder might include two or more aggregate groups, or an aggregate group and various individual line items, under an "all or none" qualification, and the result would be incorrect if proportionate weight factors were used in the evaluation process.

(e) Weight factors shall not be based on the estimated dollar value of purchases. If the dollar value of previous purchases is the only information available, and there is no recourse but to make award on an aggregate basis, the value of previous purchases shall be converted to quantities for the purpose of establishing weight factors (i.e., divide total purchases of each item by the unit price to determine number of units purchased).

(f) If reliable estimates are not available, consideration should be given to using the price list method of making awards as described in GSAR 514.272, provided the criteria for use of this method of award is satisfied.

(g) The contracting officer shall include the basis for calculating the weight factors in the contract file.

[50 FR 10048, Mar. 13, 1985]

514.271-3 Grouping of line items for aggregate award.

(a) *General.* (1) Line items should not be grouped for award on an aggregate basis if such arrangement will preclude a significant number of firms from bidding due to their inability to furnish all of the types of articles or services included in an aggregate group, or their inability to furnish the volume of supplies or services as a result of grouping numerous delivery points or service areas.

(2) Line items should not be grouped for award on an aggregate basis if such action will tend to increase overall prices to the Government due to restricting the number of eligible bidders for reasons indicated in the preceding paragraph, or for other reasons described in paragraphs (b) and (c) below.

(3) The following subparagraphs of this GSAR 514.271-3 are addressed to supply contracts (articles and delivery points), but the same principles apply to service contracts (types of services and service areas).

(4) The contracting officer shall include the rationale for establishing the aggregate groups in the contract file.

(b) *Grouping of different articles.* Only articles of a related character, normally manufactured or produced by a majority of prospective bidders, should be included in a single aggregate group. The grouping of unrelated articles tends to exclude bidders who cannot bid on all articles within an aggregate group, or results in higher prices and production problems by forcing bidders to subcontract for articles they do not manufacture or produce.

(c) *Grouping of geographic locations.* The following guidelines shall be given consideration by the contracting officer in deciding whether to group different geographic locations for aggregate award:

(1) See justifications listed in GSAR 514.271-1(b), subparagraphs (3), (4), and (5). Generally, if different delivery points have sufficient requirements so that individual shipments to each point will involve not only economic production run, but carload or truckload quantities, these points should be awarded separately, rather than in the aggregate.

(2) The types of bidders (i.e., small or large firms, manufacturers or distributors, etc.) responding to previous solicitations are an important consideration. For example, if previous bidders are distributors having franchises within certain territories, the aggregating of different territories would tend to restrict competition. (Also see, paragraph (a)(1) of this GSAR 514.271-3).

(3) A major consideration is whether transportation costs constitute a significant portion of the total cost of delivered articles. In this connection, contracting officers should obtain the advice and assistance of transportation specialists, including information regarding the location of tariff boundaries. The following matters relate to transportation considerations:

(i) The aggregating of relatively widespread geographic points may result in higher prices due to the loss of "area pricing" advantages. That is if potential suppliers have single production points located in different parts of the country, the aggregating of delivery points located in the eastern, midwestern, and western parts of the U.S. will result in increased prices due to the transportation costs involved in shipping supplies from east to west, or vice versa.

(ii) If the articles are commercial items (e.g., hand tools, locks, etc.), manufacturers may quote the same price for delivery anywhere in the U.S. (This is a situation in which transportation costs are not a hindrance to aggregating relatively widespread geographic points.)

(d) *Grouping of delivery points.* The principles in this GSAR 514.271-3 shall also be observed in connection with the combining of delivery points (e.g., GSA supply distribution facilities), states, and GSA regions for the solicitation of prices on a "zone" basis.

[50 FR 10049, Mar. 13, 1985]

514.272 Price list method.

(a) *General.* The price list method of solicitation, evaluation and award may be used to avoid unbalanced bidding in requirements and indefinite quantity/indefinite delivery contracts when aggregate awards will be made and accurate estimates of anticipated quantities are unavailable. The price list method provides for the use of pre-established list prices in acquiring groups of similar items, services, or repairs and alterations. Elements of the price list method include, but are not limited to, the following:

(1) Pre-established list prices are included in the solicitation.

(2) Estimated requirements are shown in the solicitation, if available.

(3) Bids are expressed as a percentage added to or deducted from the list prices for each group. The criteria in GSAR 514.271-3 shall be followed when grouping items.

(4) The contract is awarded to the responsible and responsive bidder who submits the percentage factor that produces the most favorable price to the Government in accordance with the solicitation.

(b) *Development of pre-established list prices.* (1) In developing pre-established list prices, industry surveys should be conducted every 3 years. Before using proposed list prices for the first time, firms expected to submit bids should be given an opportunity to review the proposed list prices. In addition to the proposed list prices, firms should be furnished with information on how the list prices will be used under the price list method. Copies of the draft solicitation may be furnished for this purpose.

(2) If industry price lists are not available for the items or services involved, pre-established list prices may be developed using the Government cost estimated for the item or service.

(3) Pre-established list prices may also be developed based on knowledge of the trade and previous contract prices. When using pre-established list prices, the contracting officer must ensure that items are properly grouped and that the list prices shown for the items within each group bear a reasonable and balanced relationship to one another. Prior contract prices resulting from awards made under the weighted item method should not be used for developing pre-established list prices until those contract prices are carefully checked to ensure that they did not result from unbalanced bidding.

[50 FR 10049, Mar. 13, 1985]

514.272-1 Supply contracts.

(a) Estimated requirements for each item in a group or for the group as a whole shall be shown in the solicitation. For contracts for store stock items, estimated quantities should be shown only if estimates of demand for each item within a group can be derived from Government records (or verified contractor sales reports). All the estimates must be reviewed and updated before being used in any solicitation. If the Government's needs cannot be estimated, the solicitation may include past orders. (See CG Decision, B-209037, 82-2 CPD para 323 (1982).)

(b) Arrange the bidding schedule in each solicitation so that it is clear to bidders that only one percentage amount may be quoted for each group and that it may be quoted either as a deduction from or as an addition to the listed prices (see illustration of bidding schedule arrangement in paragraph (c) of this section).

(c) The following is an illustration of a bidding schedule arrangement for a group of items for aggregate award under the pricelist method:

Drills, Twist, High Speed, under Federal Specification (dated——) and Amendment—— (dated——), Wire gauge sizes, straight shank, short length, Type C:

GROUP 1 (ITEMS 1 THROUGH 5)

Item No.	National stock No.	Drill size	Estimated quantity	Unit	List price
1	5133-00-189-9246	1	2,800	Pkg	$11.16
2	5133-00-189-9247	2	2,400	Pkg	11.16
3	5133-00-189-9248	3	2,800	Pkg	10.44
4	5133-00-189-9249	4	1,600	Pkg	10.80
5	5133-00-189-9250	5	2,000	Pkg	10.80

The bid on each item above is the list price shown minus/plus —— percent. (Bidder, insert "net" or a single percentage amount in the blank space and cross out minus or plus, as appropriate.)

[50 FR 10050, Mar. 13, 1985]

514.272-2 Repair and alteration contracts.

(a) *Estimating prices and requirements*—(1) *Estimated quantities and unit prices.* When developing a new solicitation, the contracting officer shall ensure that quantity estimates and unit prices are as accurate as possible. Quantity estimates should be developed from the historical data file and from information available on anticipated program requirements for the area(s) covered by the contract. Guidance on establishing unit prices may be found in industry publications such as, *The Richardson Rapid Construction Cost Estimating System; Building Construction Cost Data,* Robert Show Means Co., Inc.; or *Building Cost File,* Construction Publishing Co., Inc.

(2) *Estimated quanitity and unit price for each line item.* The solicitation should list the quantities, when available, and unit prices for work performed during normal working hours, and quantities and unit prices for work performed outside of normal working hours. The solicitation shall also contain a statement indicating the percentage of work anticipated to be performed during normal working hours and that to be performed during other than normal working hours; e.g., it is anticipated that 70 percent of the work under this contract will be performed during normal working hours. The solicitation shall specify the hours and days of the week that are considered normal.

(b) *Instruction to bidders.* (1) Bidders shall be instructed to submit one (percentage) bid to be applied to unit prices listed in the solicitation or two or more percentages to be applied to specified categories of unit prices. The percentage(s) shall be net, or a percentage above or below the unit prices to which it is applied.

(2) If separate line item unit prices have been established for work performed during normal working hours and for work performed outside normal working hours, a single percentage should be stated.

(3) If separate unit prices have not been established, two percentages are required; one to be applied to the unit prices for work performed during normal working hours and the other to be applied to unit prices for work performed outside normal working hours. In either case, the estimated percentage of work to be performed during normal working hours shall be stated in the solicitation.

(4) If unit prices are further grouped by trade or similar category, multiple percentage may be required.

(c) *Notification to bidders.* Bidders should be advised of the total expenditures for previous years or portions thereof. A statement must be included in the solicitation when estimates are provided that quantity estimates are furnished for information only and are not to be construed as guarantees or commitments to order items under the contract.

(d) *Method of evaluation and award.* (1) When separate line item unit prices are listed in the solicitation for work to be performed during both normal working hours and other than normal working hours, the bid price should be stated as a single percentage discount from, or addition to, the pre-established list price. The contract shall be awarded to the responsible and responsive bidder who submits the percentage factor that will produce the lowest unit price for each item when multipled by the pre-established price listed in the solicitation.

(2) When a particular percent is bid for work performed during normal working hours and another percent for work during other than normal working hours, the evaluated bid price shall be determined by multiplying the Government estimated total dollar amount of work to be performed during normal hours by the percentage bid for that portion of the work. The Government estimated dollar amount for the work performed during other than normal working hours shall be multiplied by the percentage bid for that portion of the work. The sum of the two evaluated prices shall be used to determine the lowest bidder.

(3) Depending on the requirements listed in the solicitation, the contracting officer may establish additional evaluation criteria, which shall be set forth in the solicitation.

[50 FR 10050, Mar. 13, 1985]

Subpart 514.3—Submission of Bids

514.301 Responsiveness of bids.

514.301-70 Facsimile transmission of bids.

Bids, modifications, or withdrawals of bids transmitted through facsimile equipment may not be considered unless authorized by the solicitation. Facsimile bids, as used herein, refers to messages transmitted via facsimile equipment directly to a GSA office or facility. It does not include messages sent to commercial carriers for delivery to the office designated for receipt of bids (e.g. zap mail). Solicitations may not authorize the submission of facsimile bids unless the facsimile equipment is located in the office designated to receive bids so the incoming messages can be properly safeguarded. When authorizing the submission of facsimiles, the contracting officer must state in the solicitation that facsimile submissions are authorized, and provide the telephone number of facsimile receiving equipment and compatibility characteristics (e.g., make and model number, receiving speed, communications protocol).

[53 FR 30842, Aug. 16, 1988]

514.303 Modification or withdrawal of bids.

(a) Bid modifications received before bid opening time shall be handled in the same manner as bids and shall be attached to the related bid envelope to ensure opening at the same time. When a telegraphic modification or withdrawal of a bid is received by telephone under the circumstances described in FAR 14.303, the identity of the telegraph office employee telephoning the message shall be obtained and recorded in the solicitation file.

(b) The receipt required by FAR 14.303(b) for withdrawal of a bid in person by a bidder or an authorized representative of the bidder before the time set for opening shall be worded as follows:

> I certify that I am a bona fide fully authorized agent for or representative of (Bidder's name and address) whose bid on IFB No. —— is scheduled for opening on ——. I hereby withdraw that bid from consideration and acknowledge receipt of the unopened bid.
>
> Name and telephone No. ————————
> Date ——————

(c) The provision in 552.214-72, Telegraphic Submissions, Modifications, or Withdrawal of Bids Received at the GSA Communications Center, shall be included in all solicitations for supply and service contracts.

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10051, Mar. 13, 1985]

514.304 Late bids, late modification of bids, or late withdrawal of bids.

514.304-1 General.

Upon receipt of a late bid, the bid custodian shall record it on the duplicate copy of the list of bidders and immediately notify the responsible contracting officer that the bid has been received. The contracting officer will arrange for the bid to be picked up or delivered.

[53 FR 30842, Aug. 16, 1988]

514.370 Copies of bids required in submission.

Bids shall be submitted in an original and at least one copy which may be a machine produced copy. Additional copies may be required, if warranted. The original will be used by the contracting activity for the tabulation of bids. The copy will be retained by the Business Service Center for public information until the bid abstract is available to replace it. When information such as the GSA Form 527, Contractor's Qualifications and Financial Information, or Standard Form 24, Bid Bond, is submitted with a bid, it shall not be retained by the Business Service Center for public information.

[53 FR 30842, Aug. 16, 1988]

Subpart 514.4—Opening of Bids and Award of Contract

514.401 Receipt and safeguarding of bids.

(a) Except as otherwise provided in paragraph (c), bids and modifications shall be received and safeguarded by the appropriate Business Service Center until the time specified for opening. Adequate space and facilities must be provided for the receipt and safeguarding of bids and for the holding of public bid openings. This shall include a locking-type bid box located within sight of the bid custodian and in a place where bidders or their representatives can readily deposit bids. Bids received shall be handled as follows:

(1) At the initial point of receipt, each envelope (or other covering) received by mail and identified as containing a bid shall be immediately timestamped or indicated thereon the place, date, and time of receipt by authorized personnel. Then the bid(s) shall be delivered by special handling to the bid custodian. Each Business Service Center Director shall designate bid custodians and alternates, as may be required, to perform the functions incident to the receipt, custody, and recording of bids.

(2) Insufficient postage on bid envelopes shall not be a reason for failure to accept delivery of bids.

(3) Mailed bids and modifications delivered to the bid custodian before bid opening time shall be recorded on the bidders list on the same day they are delivered and then placed in suitable locked cabinet.

(4) Hand-carried bids delivered before bid opening time will be deposited in the locked bid box. The bid custodian shall have custody of a key or combination to the bid box. In the event a hand-carried bid is not placed in the bid box by the bidder, but is handed to the bid custodian or other GSA personnel, it shall be time stamped immediately and then handled in the same manner as provided for mailed bids. At least once daily (and immediately preceding the time for each scheduled bid opening), the bid custodian shall remove and time stamp the bids, record them and place them with any other bids previously received.

(5) Telegraphic bids and modifications shall be sealed in envelopes immediately upon receipt, appropriately identified, and handled in the same manner as bids submitted by mail.

(6) For each invitation, the bid custodian shall prepare a list of the bidders whose bids are received before bid opening time using the GSA Form 1378, Record of, and Receipt for, Bids and Responses or the appropriate bid abstract form. The list shall show the invitation number and the name and address of each bidder. In addition, when a bid modification is received before bid opening time or when a bid previously recorded on this list is withdrawn, the list shall so indicate.

(b) At the scheduled bid opening time, the bid custodian shall deliver all bids received in response to the invitation, together with both copies of the list of bidders, to the authorized bid opening official or designee, who shall acknowledge receipt of the bids by signing the duplicate copy of the GSA Form 1378 or the appropriate bid abstract form and returning it to the bid custodian. The original list shall become part of the contract file.

(c) Business Service Center Directors may designate an individual(s) working at a PBS Facility Support Center or Enhanced Field Office as a bid custodian, provided: (1) Adequate space and facilities are available within the Facility Support Center or Enhanced Field Office, (2) the individual(s) has been trained and (3) the Facility Support Center or Enhanced Field Office has a Small Business Technical Advisor. If such designations are made, the designated bid custodian must submit monthly reports to the BSC Director for forwarding to the Office of Small and Disadvantaged Business Utilization (AU).

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10051, Mar. 13, 1985; 53 FR 30842, Aug. 16, 1988]

514.402 Opening of bids.

514.402-1 Unclassified bids.

(a) Public bid openings will normally be held in the Business Service Center. The schedule for bid openings shall be developed jointly by the Business Service Center and the bid opening officer in order to avoid conflicts. The contracting officer shall be responsible for obtaining space for bid openings which are to be held outside the Business Service Center. When the bid opening will be held elsewhere, the contracting officer shall inform the Business Service Center serving the geographic area in which the contracting office is located, of the invitation number and the location where the public bid opening will be held.

(b) The assistant bid opening officer shall be a qualified employee of the contracting office. Upon authorization by the head of the contracting activity, and the Director of Small and Disadvantaged Business Utilization in Central office or the Director of the Business Service Center in the region, bids may be opened by selected Business Service Center personnal. Normally, this authorization will be requested only when the geographic distance separating the Business Service Center where bids are to be delivered and the contracting office makes it impracticable for the bid opening officer or designee to be present to open bids. (See FAR 14.402-1(b).)

(c) Bid openings shall be open to business representatives, members of the press, and the general public.

(d) To ensure that bids will be opened at the exact time specified, the bid opening official shall verify the accuracy of the timepiece to be used.

(e) For the information of those bidders present, approximately one-minute prior notice of bid opening will be announced audibly by the bid opening official.

(f)(1) The bid opening official shall take precaution to ensure that the exact time of opening has arrived and shall announce this fact audibly, citing the invitation or invitations scheduled for opening. The opening of bids shall then proceed in full view of the parties present.

(2) For construction contracts that provide for bid alternates, the amount of funds available for the award shall be announced prior to opening bids.

(g) In reading bids, the following information from each bid shall be announced when considered practicable and feasible: The name of the bidder, the unit price for each item bid upon, and other pertinent information, such as delivery and discount terms. A copy of each bid submitted in multiple copies shall remain in the bid opening room and be available for public examination until the bid abstract is completed and made available instead. Bids submitted in an original only shall be made available for examination in accordance with FAR 14.402-1(c).

(h) No person shall tamper with any bid after it has been formally opened. This includes making any alterations or notations with pencil or ink, or disassembling or withdrawing pages or adding pages not submitted with the bid.

(i) When invitations for bids provide for the summission of bid guarantees, the contracting officer or designated bid opening official, shall turn over any checks submitted to satisfy the bid guarantee requirement to the regional Finance Division. As soon as an award is made, the contracting officer shall direct the regional Finance Division to issue a check to the unsuccessful offeror in an amount equal to the amount of the bid guarantee originally submitted. A similar procedure shall be followed in the event the solicitation is canceled or all bids are rejected. Bid guarantees may be returned before award when a bidder requests the guarantee be returned and the bidder is not in contention for the award. Other forms of bid guarantees e.g., bid bonds, letters of credit, etc. shall be retained by the contracting officer and include in the contract file.

(j) A record of persons attending each bid opening shall be maintained. This record shall include at least the names of persons present, firms or organizations represented, date and time of opening, and the invitation numbers in which each person is interested. The reverse of the bid abstract form may be used for this purpose. The record shall be made a part of the invitation for bids file.

(k) If two or more bid openings are scheduled for the same date and hour and are to be conducted by the same bid opening official, normally the bid opening for which the greatest number of persons is present shall be conducted first.

(l) When multiple copies of bids are received, the bid opening official shall verify the entries on all copies. If there is a discrepancy between the copies of a bid, the contracting officer shall direct the bidder's attention to the suspected mistake and shall follow the procedures set forth in FAR 14.406 concerning mistakes in bids.

(m) Envelopes in which bids and bid modifications are received shall be retained in a temporary file until after all awards have been made. At that time, those which bear notations concerning abnormal receipt or opening for identification shall be made a part of the solicitation file and the remainder may be destroyed.

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10051, Mar. 13, 1985; 53 FR 30843, Aug. 16, 1988]

514.402-3 Postponement of openings.

(a) When the contracting officer postpones a bid opening (see FAR 14.402-3), an amendment (see FAR 14.208) to the solicitation must be issued and distributed to all prospective bidders and the appropriate Business Service Center by mail or telegraph as soon as possible. The new time and date set for bid opening must be established as soon as possible and coordinated with the Business Service Center. Prospective bidders must be notified of the new time and date.

(b) When an amendment is issued as described in paragraph (a) of this 514.402-3, bids and modifications received before the new time and date set for the opening of bids shall be considered for award. Bids and modifications received thereafter shall be handled according to the provisions of FAR 14.304 regarding late bids and modifications.

(c) Consent of surety to extension of the bid acceptance period need be obtained only if such extension goes beyond 120 days when Standard Form 24, Bid Bond, has been executed.

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10051, Mar. 13, 1985; 53 FR 30843, Aug. 16, 1988]

514.403 Recording of bids.

(a) The abstracting and tabulating of bids normally are completed within 24 hours after bid opening, and a copy delivered immediately to the appropriate Business Service Center where it is made available for public examination for a minimum period of 30 calendar days. Late bids determined eligible for consideration must be included on the bid abstract form. However, if eligibility is established after delivery of the original tabulation, the bids are recorded separately, identified as an amendment to the original tabulation, and delivered to the Business Service Center.

(b) Abstracts involving aggregate awards must record unit prices, weight factors and aggregate totals for each aggregate group in addition to any other information required for bid evaluation.

(c) The GSA Form 3471, Abstract of Offers, is authorized for use by contracting activities in the Public Buildings Service (PBS) instead of the Standard Form 1409, Abstract of Offers, when recording offers for building services.

[51 FR 45896, Dec. 23, 1986]

514.404 Rejection of bids.

514.404-1 Cancellation of invitations after opening.

The head of the contracting activity is delegated the authority to cancel invitations for bid and to reject all bids received or to cancel invitations for bids and authorize the use of negotiations to complete the acquisition in accordance with FAR 14.404-1 and 15.103. This authority may be redelegated. When exercising this authority, the required determination documenting the reasons for rejecting all bids and authorizing completion of the acquisition through negotiation, when applicable, shall be included in the contract file.

[50 FR 36084, Sept. 5, 1985]

514.404-2 Rejection of individual bids.

(a) When an award is proposed to other than the low offeror, the contracting officer shall explain the circumstances by using substantially the following format and justify rejection of the low offer either on GSA Form 1535, Recommendation for Award(s) or on a separate sheet:

Award to Other than Low Offeror:

(1) Item number(s) involved.

(2) Names of low offeror(s) and proposed awardee(s).

(3) Low and proposed prices:

(i) Unit.

(ii) Totals.

(4) Differences:

(i) In total prices.

(ii) In percent.

(5) *Explanation:* Example, "FAR 14.404-2(a), Failure to conform to the essential requirements of the invitation: The deviation is unacceptable." (Include a description of the specific requirement to which the bid fails to conform.)

(b) When a proposed rejection is based on failure to meet Qualified Products List (QPL) requirements, the explanation shall include information as to whether the items offered had been tested and approved for inclusion in the QPL as required by the solicitation; whether the item had been submitted for qualification testing; and/or the status of testing, if available.

(c) Explanations which involve cases of a sensitive or controversial nature shall be accompained by all supporting documentation to justify awards to other than low offerors, such as copy of the offer to be rejected, statements from (or record of conversation with) the requisitioning activity, plant facilities and/or financial responsibility reports, relevant correspondence or reports; e.g., with the Small Business Administration on Certificates of Competency matters, copies of Congressional correspondence or other high level interest, etc.

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10052, Mar. 13, 1985]

514.404-5 All or none qualifications.

The clauses in 552.214-73 regarding all or none offers apply to solicitations for definite quantity and indefinite quantity type contracts.

514.405 Minor informalities or irregularities in bids.

(a) When bidders are instructed in the solicitation to return the entire solicitation and a page or pages are missing from the bid, the contracting officer shall determine whether it is a major defect or if it constitutes a minor informality or irregularity which may be waived under FAR 14.405. The essential test whether such bid may be considered responsive is whether the bidder's intention to be bound by all substantive portions of the solicitation in any resulting contract is evident from the terms of the bid as submitted. For example, when the solicitation portion of SF 33 specifically identifies the number of pages in the solicitation and the bidder has taken no exception to any portion of the solicitation, the signed offer usually should be considered as evidencing the bidder's intention to be bound by all of the substantive terms and conditions of the solicitation.

(b) If the missing pages are waived, as a minor informality or irregularity, the contractor shall be advised by letter accompanying the award document identifying the missing pages and incorporating them as part of the contract. The letter should caution the contractor that failure to submit all pages of a bid could cause rejection of a bid as nonresponsive in cases when a missing page contained substantive rather than inconsequential material

514.406 Mistakes in bids.

514.406-3 Other mistakes disclosed before award.

(a) *Delegations of authority by head of the agency.* Under FAR 14.406-3(e), the heads of contracting activities (HCA's) are authorized, without power of redelegation, to make the determinations regarding corrections and/or withdrawals treated in FAR 14.406-3 (a), (b), and (c), and to make the corollary determinations not to permit withdrawal or correction for reasons indicated in FAR 14.406-3(d).

(b) *Format for determinations.* Determinations under FAR 14.406-3 must be prepared in the format shown below.

FINDINGS AND ADMINISTRATIVE DETERMINATION ALLEGED MISTAKE IN BID ("PRIOR TO AWARD" OR "AFTER AWARD") BY (NAME OF BIDDER) (IFB No.)

Pursuant to Federal Acquisition Regulation 14.406 and General Services Administration Acquisition Regulation 514.406, I hereby make the following findings:

FINDINGS

(List in chronological order the information required by FAR 14.406, including a numerical list of exhibits.)

DETERMINATION

Based on the above findings, I hereby determine in accordance with FAR (14.406-3 (a) or (b), (c), (d), (g) or 14.406-4) that (include an appropriate statement indicating the determination to permit withdrawal, correction, etc.).

Contracting Officer (Determinations under FAR 14.406-3(g)(5) or 14.406-4)

Date

Head of Contracting Activity (Determinations under FAR 14.406-3 (a) (b) (c) or (d))

Date

I have reviewed the above case as to form, technical accuracy of the proposed determination, and the general accuracy of the supporting evidence and approved it as to legal sufficiency.

Assigned Counsel

Date

(c) *Legal review and concurrence.* Assigned counsel must approve determinations by the HCA and Contracting Officer regarding mistakes in bid.

[50 FR 10052, Mar. 13, 1985, as amended at 53 FR 30843, Aug. 16, 1988]

514.406-4 Mistakes after award.

Assigned counsel must approve determinations by the HCA and Contracting Officer regarding mistakes in bid.

[53 FR 30843, Aug. 16, 1988]

514.407 Award.

514.407-1 General.

If an award is made to a bidder for less than all of the items that may be awarded to that bidder under a solicitation and additional items are being withheld for possible subsequent award, any subsequent award to that bidder must be made using SF-30, Amendment of Solicitation/Modification of Contract (except see GSAR 519.502-3(c) regarding partial set-asides). The authority cited in paragraph 13D of SF-30 for the subsequent award will be FAR 14.407-1(c)(4). This procedure presumes that initial and subsequent awards are being made during the bid acceptance period.

[53 FR 17949, May 19, 1988]

514.407-2 Responsible bidder—reasonableness of price.

(a) When only one bid is received in response to an invitation for bids, the bid may be considered and accepted if: (1) The specifications used in the invitation were not restrictive, (2) adequate competition was solicited, (3) the price is reasonable, and (4) the bid is otherwise consistent with the invitation for bids.

(b) The responsible contracting officer shall document the contract file to the effect that an award to the only bidder is in the best interest of the Government, and that the price is reasonable. The basis for price reasonableness shall be established, if possible, from data or information which is available to the contracting officer without contacting the bidder. (See FAR 15.805-2 for price analysis tecnniques and guidelines.)

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10052, Mar. 13, 1985]

514.407-3 Prompt payments discounts.

See GSAR 532.111(a), which prescribes a modification to the contract clause at FAR 52.232-8, Discounts for Prompt Payment, with respect to payment due dates.

[51 FR 23061, June 25, 1986]

514.407-6 Equal low bids.

In determining which priority in FAR 14.407-6 applies to each of the equal low bidders involved in a tie-bid situation, the status of the bidders (small/large/labor surplus area) on the date the bid was signed shall be controlling.

[50 FR 10052, Mar. 13, 1985]

514.407-7 Documentation of award.

A record of the method of purchase and basis for award shall be retained in the file and, in addition to the information required by FAR 14.407-7, shall include the number of firms solicited.

514.407-8 Protests against award.

See FAR Part 33 and GSAR Part 533.

[50 FR 10052, Mar. 13, 1985]

514.407-70 Preaward inquiries.

Preaward inquiries from bidders (oral or written) should be handled in accordance with the following:

(a) If the inquiry concerns the status of an award and a notice of award has not be issued, the response shall be limited to a statement that final award determination has not been made.

(b) The bidder may also be advised if the case has been referred to the Small Business Administration for consideration for Certificate of Competency action, and the reasons why.

(c) No information shall be furnished concerning the status of a proposed award being processed through GSA approval channels. When pressed for information under these circumstances, bidders shall be advised that our policy and procedures do not permit the release of information about status of awards while they are in process.

(d) Any action or discussion which may create false impressions in the eyes of prospective contractors about any forthcoming award must be avoided.

[50 FR 10052, Mar. 13, 1985]

514.407-71 Awards involving related cases referred to higher authority.

When a case is to be or has been referred to higher authority for review, any action which might prejudice the freedom of the higher authority to act on that case must be avoided. This includes other awards to the same bidder under the same solicitation.

514.407-72 Extension of time for bid acceptance.

(a) It is provided in FAR 14.404-1(d) that ". . . the several lowest bidders . . . (irrespective of the acceptance period specified in the bid) should be requested, before expiration of their bids, to extend in writing the bid acceptance period . . ." This means not only the low bidders, but second-low bidders, etc., whose bids are considered acceptable, because a low bidder may be determined nonresponsible. How many bidders should be requested to extend their bids is a matter of judgement on the part of the contracting officer.

(b) Requests for extension of bid acceptance time may be made by the use of optional form letter GSA Form 2981, or by other means. The additional time desired by the Government shall be specified in the request, and the period shall be reasonable under the circumstances.

(c) If time does not permit an exchange of correspondence, the contracting officer may request an extension by telephone or telegraph, but the extension or confirmation thereof is required to be in writing (see paragraph (a) above).

(d) A bidder shall not be requested to extend the offered bid acceptance time if the contracting officers has determined, with the concurrence of legal counsel, that the bid is unacceptable due to price or other reasons.

(e) If a Standard Form 24, Bid Bond, has been executed, the consent of the surety to an extension of the bid acceptance period is necessary if the extension(s) exceeds by more than 60 calendar days the period originally allowed for acceptance, as explained on the face of the form.

(f) If a bidder does not grant the additional bid acceptance time requested, special action shall be taken to accomplish acceptance of the bid within the time allowed by the bidder. Should it be advisable to permit the bid to expire, the contracting officer shall promptly, before expiration of the bid, refer the case to the appropriate contracting director for a decision.

(g) Appropriate legal counsel shall be consulted before an award is made when the acceptance time of an otherwise acceptable bid has expired.

[50 FR 10052, Mar. 13, 1985]

514.407-73 Forms for recommending award(s) (supplies and services).

(a) GSA Form 1535, Recommendation for Award(s), and GSA Form 1535-A, Recommendation for Award(s), Continuation Sheet, shall be used to document all proposed awards (except construction contracts) of more than $25,000 whether resulting from sealed bid or negotiated procurements. The use of the form for awards of $25,000 or less is at the discretion of the contracting activity. One or more awards may be set forth on each form. All information pertinent to the recommendation shall be furnished on the form. The checklist on the back of the form shall be completed.

(b) GSA Form 1447, Procurement Case Summary, shall be used to detail the analyses of procurements which require concurrence or approval in accordance with the GSA Delegations of Authority Manual (ADM P 5450.39B) or FSS Central Office Delegations of Authority (FSS P 5450.21B).

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10052, Mar. 13, 1985]

514.407-74 Preparation of documents for acceptance.

The acceptance of an offer received on SF 33, Solicitation, Offer, and Award, shall be as follows:

(a) *Definite-quantity contracts.* (1) *Single consignee.* When only one consignee is involved, notice of award of contract shall be documented as specified below:

(i) When Standard Form 33 is used, the award portion on both the original and duplicate copies of the accepted offer shall be completed. The original contract shall be retained by the Government and the duplicate copy shall be furnished to the contractor. Also, purchase (delivery) order must be issued to provide shipping instructions and necessary information copies to others concerned.

(ii) When a purchase order form is used, enter substantially the following: "Your offer on solicitation No. —— is accepted for items listed herein." Under this procedure, the original contract consists of the original bid signed by the contractor and the paying office copy of the purchase order, signed by the contracting officer. The contractor's copy of the contract consists of the contractor's retained copy of the bid and the original purchase order, signed by the contracting officer.

(2) *Multiple consignees.* Award on Standard Form 26, Award/Contract, normally is advantageous for contracts involving more than one consignee. However, when numerous items on a single invitation for bids are awarded to one contractor, completion of the Award portion of Standard Form 33 may be more advantageous. Either method of documenting the award is authorized.

(b) *Indefinite quantity contracts.* Awards for indefinite quantity contracts may be documented on either Standard Form 26 or Standard Form 33. "Indefinite" shall be entered in the spaces provided for entering the quantity and dollar amount of such awards.

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10053, Mar. 13, 1985; 50 FR 14243, Apr. 11, 1985]

514.407-75 Notification of contract award.

Successful bidders shall be notified of award by furnishing to such bidders, within the time specified for bid acceptance, documents prepared in accordance with 514.407-74. Bids specifying a certain number of days for acceptance may be accepted any time before midnight of the last day.

514.408 Information to bidders.

514.408-1 Award of unclassified contracts.

The GSA Form 3577, Notification of Contract Award, may be used on an optional basis to notify unsuccessful bidders, as required by FAR 14.408-1, that their bids were not accepted. When award is made to other than an apparent low bidder(s), the form should not be used to notify the unsuccessful low bidder(s). Such bidder(s) must be notified of the reasons for rejection of their bids.

[51 FR 16692, May 6, 1986]

EFFECTIVE DATE NOTE: Section 514.408-1 was temporarily revised at 53 FR 28886, Aug. 1, 1988. The temporary regulation expires August 1, 1989. For the convenience of the user, the temporary regulation is set forth below:

§ 514.408-1 Award of unclassified contracts.

The GSA Form 3577, Notification of Contract Award, may be used to notify all unsuccessful bidders other than (1) any apparent low bidder(s) or (2) unsuccessful bidders from designated countries for acquisitions subject to the Trade Agreements Act.

514.408-70 Restriction on disclosure of inspection or test data.

(a) No inspection or test data generated in the process of bid evaluation shall be disclosed except as provided in this subsection. This includes information obtained from inspection or test reports whether prepared by the Government or an outside inspection or testing agency.

(b) Before award, no information regarding inspection or test data shall be disclosed to any bidder or individual except Government officials or employees required to have access to such information in connection with bid evaluation and determination of award.

(c) In providing notice of the rejection of a bid, the contracting officer shall inform the bidder concerning the results of tests on the products offered by that bidder.

(d) All other inspection or test data shall be furnished in accordance with the Freedom of Information Act. (See FAR Subpart 24.2.)

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10053, Mar. 13, 1985]

514.470 Advance notice of contract award.

Advance notices of award shall be in writing over the signature of the contracting officer except as otherwise authorized. When an advance notice of award is issued, it shall be followed as soon as possible by the formal contract document.

514.470-1 Circumstances which warrant advance notice.

Advance notices of contract award may be issued by contracting officers under any of the circumstances listed below:

(a) A bid or offer is about to expire and it is necessary to issue an award notice promptly.

(b) Prompt action is necessary to afford the contractor an opportunity to secure necessary materials.

(c) Delivery or performance is urgent and cannot await release of formal contract documents.

(d) The contract involves work of an urgent nature and it is essential that the contractor rush all preliminaries before actual starting of work.

(e) Prompt action is necessary to secure advance predelivery samples on contracts.

(f) A prospective contractor requests advice, orally or in writing, as to whether he is to receive the award, and gives sufficient reasons, to the satisfaction of the contracting officer, why advance notice is desirable.

(g) Other compelling circumstances exist and advance notice is concurred in by the head of the contracting activity.

[49 FR 10820, Mar. 22, 1984, as amended at 50 FR 10053, Mar. 13, 1985]

514.470-2 Telegraphic notices.

When justified by the circumstances described in 514.470-1, telegraphic notice may be used. The notice shall contain, in addition to the requirements set forth in 514.470-4 a statement that written confirmation will follow. Such confirmation shall be issued without delay.

514.470-3 Oral notices.

Oral notices shall not be used.

514.470-4 Content of notices.

Advance notices of award shall include all of the essential elements to identify the award, such as identification of invitation, description of the acquisition, and the contract number. No language shall be used which might, in any way, vary from the terms of the bid.

[50 FR 10053, Mar. 13, 1985]

514.471 Multiple bidding.

(a) If more than one bid is received from a person or firm, or its affiliates in response to an invitation for bids, such bids shall be considered for award if responsive and otherwise acceptable.

(b) If a bidder submits bids on two or more products in response to the same item in an invitation and one of those bids is the lowest received which meets the requirements of the invitation, it may be accepted regardless of whether it is designated by the bidder as an "alternate."

PART 515—CONTRACTING BY NEGOTIATION

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515.1001 Notifications to offerors.
515.1070 Release of information concerning unsuccessful offerors.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10829, Mar. 22, 1984, unless otherwise noted.

Subpart 515.1—General Requirements for Negotiation

515.106 Contract clauses.

515.106-1 Examination of records clause.

(a) The contracting officer shall insert the clause at GSAR 552.215-70, Examination of Records by GSA, in solicitations and contracts that do not include the Audit-Negotiation clause prescribed in FAR 15.106-2 and are subject to audit as indicated in GSAR 501.671-3.

(b) In some of the contracts listed in GSAR 501.671-3, it may be appropriate to define the specific area of audit such as (1) the use or disposition of Government-furnished property, or (2) variable or other special features of the contract; e.g., price escalation and compliance with the price warranty or price reductions clauses. In these cases, the contract clause in GSAR 552.215-70 may be appropriately modified with the concurrence of the Office of General Counsel or Regional Counsel, and the Assistant Inspector General-Auditing, or the Regional Inspector General-Auditing, as appropriate.

(c) Insertion of the contract clause in 552.215-70 (modified or not) in contracts does not affect the requirements for use of the Examination of Records clause permitting review of contractor books and records by the Comptroller General or the clauses on audit and records pertaining to verifying cost or pricing data.

[49 FR 10829, Mar. 22, 1984, as amended at 50 FR 2286, Jan. 16, 1985; 50 FR 10053, Mar. 13, 1985]

515.170 Authorization and approval.

Requirements of pre-award and post-award review and approval of contracts are prescribed in the GSA Order, Contract Clearance (APD 2800.1B).

[50 FR 10054, Mar. 13, 1985]

Subpart 515.4—Solicitation and Receipt of Proposals and Quotations

515.402 General.

(a) An oral solicitation is not justified solely because the acquisition is being made under the authority of FAR 6.302-2, Unusual and Compelling Urgency.

(b) Oral solicitations, other than those authorized for small purchases (see GSAR 513.106(c) and 513.106-70), shall only be used under the conditions prescribed in FAR 15.402(f), with prior approval at a level higher than the contracting officer.

[50 FR 10054, Mar. 13, 1985]

515.403 Solicitation mailing lists.

Source lists for negotiated acquisitions shall be established, maintained, and used in accordance with FAR 14.205 and GSAR 514.205.

[50 FR 10054, Mar. 13, 1985]

515.405 Solicitations for information or planning purposes.

515.405-1 General.

Solicitations for information or planning purposes shall be approved by the contracting director.

[50 FR 10054, Mar. 13, 1985]

515.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

515.406-1 Uniform contract format.

(a) Contracts for utility services and leases of real property are exempted from the requirement for use of the uniform contract format.

(b) All contracts, including leases of real property, shall include the following notice:

> The information collection requirements contained in this solicitation/contract, that are not required by regulation, have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB control no. 3090-0163.

[49 FR 10829, Mar. 22, 1984, as amended at 50 FR 10054, Mar. 13, 1985]

515.406-2 Part I—The schedule.

The contracting officer shall insert the provision at GSAR 552.215-75, Data Universal Numbering System (DUNS), in solicitations for supplies and services when the contract amount is expected to exceed the small purchase limitation.

[50 FR 10054, Mar. 13, 1985]

515.407 Solicitation provisions.

(a)-(b) [Reserved]

(c) The contracting officer shall insert the provision at 552.215-73, Preparation of Offers-Construction, in solicitations for construction in lieu of the provision at FAR 52.215-13.

(d) The contracting officer shall insert the provision at 552.215-74, Contract Award-Negotiated-Construction, in solicitations for construction in lieu of the provision at FAR 52.215-16.

[49 FR 10820, Mar. 22, 1984, as amended at 52 FR 6562, Mar. 4, 1987; 53 FR 30843, Aug. 16, 1988]

515.411 Receipt of proposals and quotations.

(a) Solicitations should provide for proposals and modifications to proposals to be submitted to the appropriate contracting office unless arrangements have been made with the local Business Service Center (BSC) for receipt and safeguarding of proposals by the BSC.

(b) Classified proposals and quotations must be handled under FAR 15.411, GSAR Subpart 504.4, and the requirements of GSA Order, Freedom of Information Act procedures (ADM 1035.11).

[53 FR 30843, Aug. 16, 1988]

515.411-70 Recording of offers.

The GSA and/or Standard Forms prescribed for abstracting bids in sealed bidding may be used to abstract proposals or quotations submitted in connection with competitively negotiated procurements where more than one offer is received in response to the solicitation. (See FAR 4.803(a)(10).) The forms may be appropriately modified to include all of the information necessary for evaluation. Abstracts shall not be provided to the Business Service Center or diclosed except as provided in 515.1070. See FAR 15.411, 15.413 and 15.1001 regarding disclosure of information.

[53 FR 30843, Aug. 16, 1988]

515.412 Late proposals and modifications.

(a) Contracting Officers in the Federal Supply Service have been authorized to deviate from the FAR provision at 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals in solicitations for Multiple Award Schedules by deleting paragraph (a)(3). The effect of this deviation is to establish the closing date for receipt of proposals in block 9 of the Standard Form 33, Solicitation, Offer and Award, as a firm cut-off date for receipt of proposals. Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it qualifies under paragraphs (a)(1), (a)(2), or (b) of FAR 52.215-10.

(b) When contracting officers deviate from the FAR provision as outlined in paragraph (a) above, no additional special item numbers may be added to the proposal after the firm cut-off date established for receipt of proposals. However, additional products and/or models may be added when the item offered falls under a Special Item Number originally submitted in a timely manner.

[53 FR 30843, Aug. 16, 1988]

515.414 Forms.

When an award is made to an offeror for less than all of the items that may be awarded to that offeror and additional items are being withheld for subsequent award, the first award to that offeror shall state that the Government may make subsequent awards on those additional items within the offeror's offer acceptance period. Subsequent awards to the offeror must be made using SF-30, Amendment of Solicitation/Modificiation of Contract (except see GSAR 519.502-3(c) regarding partial set-asides). The authority cited in paragraph 13D of SF-30 for subsequent awards will be GSAR 515.414.

[53 FR 17949, May 19, 1988]

Subpart 515.5—Unsolicited Proposals

515.500 Scope of subpart.

This subpart implements and supplements the policies and procedures prescribed in FAR Subpart 15.5 for submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

515.501 Definition.

"Minimum requirements" refers only to those features that are essential to meeting the Government's need.

[50 FR 10054, Mar. 13, 1985]

515.504 Advanced guidance.

Potential offerors shall be encouraged to make preliminary contacts, as provided in FAR 15.504, with regional contracting offices and/or the Office of GSA Acquisition Policy and Regulations before to submitting a detailed unsolicited proposal or proprietary data.

[50 FR 10054, Mar. 13, 1985]

515.505 Content of unsolicited proposals.

Potential offerors shall be provided with the description of requirements for unsolicited proposals in FAR 15.505.

515.506 Agency procedures.

(a) The Office of GSA Acquisition Policy and Regulations (VP) is designated as the GSA contact point for unsolicited proposals. The address is:

General Services Administration (VP)
Washington, DC 20405

(b) Regional contracting activities shall be the local contact points for review and acknowledgment of unsolicited proposals.

515.506-1 Receipt and initial review.

(a) Unsolicited proposals shall be reviewed for the information in FAR 15.506-1, and acknowledged as soon after receipt as possible by the local point of contact as follows:

(1) When an unsolicited proposal is received first by the Region, Service, or Staff Office where the evaluation will be performed under FAR 15.506-2, that organization shall inform the offeror, by letter, that the proposal has been received. The letter should indicate the name, business address, and telephone number of the individual who will evaluate the proposal.

(2) A copy of the letter to the offeror shall be sent to the Office of GSA Acquisition Policy and Regulations (VP).

(b) When an unsolicited proposal is received first by a Region, Service, or Staff Office that is not in a position to evaluate it, the organization shall forward it to VP as soon as possible. VP will review the proposal for the information in FAR 15.506-1, and determine which organization will be responsible for evaluating the proposal.

(1) Then the proposal will be sent to the Region, Service or Staff Office that VP has determined will be responsible for the evaluation.

(2) The Region, Service, or Staff Office responsible for evaluating the proposal shall inform the offeror by letter that the proposal has been received. The letter should indicate the name, business address and the telephone number of the individual who will evaluate the proposal.

(3) If the evaluating office forwards the unsolicited proposal to another region, or office, the evaluating office shall notify VP of the location, name, and phone number of the assigned evaluator.

[49 FR 10829, Mar. 22, 1984, as amended at 50 FR 10054, Mar. 13, 1985]

515.506-2 Evaluation.

The evaluation shall be completed under FAR 15.506-2, as soon as practicable (normally within 45 calendar days). The evaluator shall send the evaluation results plus recommended action to VP. If the proposal is rejected the evaluator shall prepare the response to the offeror for the signature of the head of the organization responsible for the evaluation. A copy shall be sent to VP.

[50 FR 10054, Mar. 13, 1985]

515.507 Contracting methods.

Negotiations may not commence under an unsolicited proposal unless all of the requirements of FAR 15.507(b) are complied with.

[50 FR 10054, Mar. 13, 1985]

Subpart 515.6—Source Selection

515.608 Proposal evaluation.

[51 FR 23061, June 25, 1986]

515.608-70 Rejection of all proposals.

The head of the contracting activity is authorized to reject all proposals received in response to a solicitation pursuant to FAR 15.608(b). This authority may be redelegated. When exercising this authority, the required determination documenting the reasons for rejecting all proposals will be included in the contract file.

[51 FR 23061, June 25, 1986]

515.608-71 Discounts for prompt payment.

(a) Paragraph (c) of FAR 15.608 provides that the requirements of FAR 14.407-3 are applicable to negotiated acquisitions. The policy of not considering discounts in the evaluation of offers applies to situations where there is direct competition between two or more offerors for a single award. The policy does not apply to sole source procurements or procurements where the evaluation process involves a comparison of the offeror's price to the Government with the offeror's price to its other customers. Accordingly, the policy in FAR 14.407-3 does not apply to Multiple Award Schedule solicitations except in those instances where offers are received on identical products. The clause at 552.232-8, Discounts for Prompt Payment, specifies the extent to which discounts for prompt payment will be considered in the evaluation for Multiple Award Schedules.

(b) The formula for computing the annualized rate of return addressed in the clause at GSAR 552.232-8 is as follows:

$$\text{Discount (\%)} \quad \text{X} \quad \frac{\text{Number of days in a year}}{\begin{array}{ccc}\text{Total days to} & & \text{Days to}\\ \text{due date for} & - & \text{discount}\\ \text{payment} & \text{(minus)} & \text{due date}\end{array}} \quad = \quad \text{Rate of return}$$

[51 FR 23061, June 25, 1986]

Subpart 515.8—Price Negotiation

515.803 General.

Access to information concerning the Government cost estimate must be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent necessary to arrive at a fair and reasonable price. After award, the total amount of the independent Government estimate may be revealed, upon written request, to those firms or individuals who submitted proposals.

[51 FR 16692, May 6, 1986]

515.803-70 Cost-reimbursement contracts (construction contracts).

The consideration and discussions during negotiations of construction contracts shall include, to the extent necessary to resolve uncertainties, such matters as—

(a) The location, size, and character of the work and the estimated cost;

(b) The general conditions for the cost-plus-a-fixed-fee contract and the procedures to be followed;

(c) The organization the contractor will use at the site and proposed salaries for those employees;

(d) The types and amount of contractor's own equipment available for the project;

(e) The amount and nature of work to be performed by the contractor's own forces and by subcontract;

(f) The time for completion, liquidated damages (if specified), insurance, and bonds; and

(g) The fixed fee and the basis upon which its amount was predicated. Factors (a) through (f) affect the amount of the fee.

[49 FR 10829, Mar. 22, 1984, as amended at 50 FR 28579, July 15, 1985]

515.804 Cost or pricing data.

515.804-2 Requiring certified cost or pricing data.

When determining the contract amount for purposes of applying the threshold at FAR 15.804-2 for requesting certified cost and pricing data, the value of the contract plus any priced options shall be considered. Exercise of a priced option is not considered a price adjustment and does not require submission of cost and pricing data.

[50 FR 28579, July 15, 1985]

515.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) Pursuant to FAR 15.804-3(i), the head of the contracting activity, as defined in GSAR 502.1, is authorized to waive the statutory requirement for the submission of certified cost or pricing data.

(b) Requests for waiver will be submitted by the contracting director to the head of the contracting activity. Before submitting a waiver request, action will be taken at levels above the contracting officer to negotiate for the submission of the required cost or pricing data, or a formal determination made by the contracting director documenting the contract file with the reasons for not undertaking such higher level negotiations.

(c) The request for waiver will include a draft determination and finding that addresses: (1) Pertinent circumstances of the procurement necessitating the waiver of the requirement for certified cost or pricing data, (2) the price analysis techniques to be used if the award cannot be foregone, (3) the steps taken by higher authority to obtain the essential cost or pricing data, and (4) the practicability of obtaining the Government's requirements from other sources.

[50 FR 28579, July 15, 1985]

515.804-6 Procedural requirements.

Whenever an offeror refuses to provide the required cost or pricing data, the contracting officer shall refer the matter to the contracting director for resolution (see FAR 15.804-6(e)). Upon referral by the contracting officer, action will be taken by the contracting director to negotiate for the submission of the required cost or pricing data, unless the head of the contracting activity determines, in writing, not to undertake such higher level negotiations and the determination is documented in the contract file.

[50 FR 28579, July 15, 1985]

515.805 Proposal analysis.

515.805-5 Field pricing support.

(a) Within GSA, "field pricing support" is provided by the Assistant Inspector General-Auditing, or the Regional Inspector General-Auditing, as appropriate.

(b) When applying the threshold at FAR 15.805-5 for requesting field pricing support, the value of the proposal (including any priced options) must be used.

[51 FR 16692, May 6, 1986]

Subpart 515.9—Profit

515.902 Policy.

(a) Structured approach for determining profit fee objectives.

(1) The contracting officer's analysis of these profit factors is based on information available to the Government before negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like. The structured approach also provides a basis for documentation of a profit objective, including an explanation of any significant departure from this objective in reaching a final agreement. The extent of documentation should be directly related to the dollar value and complexity of the proposed procurement.

(2) The negotiation process does not require agreement on individual estimated cost elements or profit elements. The profit objective is a part of an overall negotiation objective. Specific agreement on the exact weights or values of the individual factors is not required and should not be attempted.

(b) Exemptions from requirement to use the structured approach.

(1) Under exempted procurements, other methods for establishing profit objectives may be used. Generally, such methods will be supported in a manner similar to that used in the structured approach (profit factor breakdown and documentation of profit objective). However, factors within the structured approach considered inapplicable to the procurement shall be excluded from the profit objectives. The following types of procurements are exempt from the structured approach:

(i) Management contracts for operation and/or maintenance of Government facilities;

(ii) Contracts primarily requiring delivery of material supplied by subcontractors;

(iii) Termination settlements;

(iv) Cost-plus-award-fee contracts;

(v) Contracts where only price analysis is required (FAR 15.805);

(vi) Contracts and contract modifications of $100,000 or less in value; and

(vii) Architect-engineer and construction contracts.

(2) Other exemptions may be made in the negotiation of contracts having unusual pricing situations where the structured approach is determined to be unsuitable. Such exemptions shall be justified in writing and approved by the head of the contracting activity.

515.905 Profit analysis factors.

(a) The following factors shall be considered in all situations in which profit is to be specifically negotiated. The weight ranges listed after each factor shall be used when the structured approach is used.

Profit factors	Weight ranges in percent
Contractor effort:	
Material acquisition	1 to 4
Conversion direct labor	4 to 12
Conversion related indirect cost	3 to 8
Other costs	1 to 3
General management	4 to 8
Other factors:	
Contract cost risk	0 to 7
Capital investment	−2 to +2
Cost-control and other past accomplishments	−2 to +2
Federal socio-economic programs	−.5 to +.5
Special situations and indepandent development	−2 to +2

(b) GSA Form 1766, Structured Approach Profit/Fee Objective, shall be used to facilitate the profit objective computation. The contracting officer shall measure the Contractor Effort by the assignment of a profit percentage within the designated weight ranges to each element of cost recognized. The amount calculated for facilities capital cost of money shall not be included in the cost base for the computation of the profit objective.

(c) *Facilities capital cost of money.* When facilities capital cost of money is included as an item of cost in the contractor's proposal a reduction in the profit objective shall be made in an amount equal to the amount of facilities capital cost of money allowed.

515.905-1 Common factors.

(a) The categories listed under Contractor Effort are for reference purposes only. Individual proposals may be in different formats; but since these categories are broad and basic they provide sufficient guidance to evaluate all items of cost.

(b) After computing a total dollar profit for Contractor Effort, the contracting officer shall calculate the specific profit dollars for contract cost risk, capital investment, cost-control and other past accomplishments, Federal social-economic programs and special situations. This is done by multiplying the total Government cost objective, exclusive of any cost of money for facilities capital, by the specific weights assigned to the elements within the Other Factors category.

(c) In determining the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as prescribed in FAR 15.905-1 and the following:

(1) *General management.* Management problems surface in various degrees and the management expertise exercised to solve them should be considered as an element of profit. For example, a new program for an item that involves advanced state of the art techniques may casue more problems and require more managerial time and abilities of a higher order, than one that is a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward as many of the problems should have been solved. An evaluation should be made of the underlying managerial effort involved on a case-by-case basis.

(2) *Other costs.* Include all other direct costs associated with contractor performance under this item (e.g., travel and relocation, direct support, and consultants). Analysis of these items of costs for the purpose of assigning profit weights shall include: (i) The significance of the costs, (ii) the nature of the costs, and (iii) how much they contribute to contract performance.

(3) *Contract cost risk.* Where proper contract type selection has been made, the reward for risk by contract type would usaully fall into the following percentage ranges:

	Percent
Cost-reimbursement type contracts	0–3
Fixed-price type contracts	3–7

(i) Within the above ranges, cost-plus-a-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads. In such cases, up to 1 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the 0 to 3 percent range with weightings directly related to such factors as confidence in target cost, share ratio of fee(s), etc. The weight range for fixed-price contracts in wide enough to accommodate the many types of fixed-price arrangements. These include fixed-price incentive, firm fixed-price with economic price adjustment, fixed-price with prospective or retroactive price determination, and firm fixed-price contracts. Weighting should indicate the cost risk assumed, with only firm fixed-price contracts reaching the top end of the range.

(ii) The contractor's subcontracting program may have significant impact on the contractor's acceptance of risk under a contract form. It could cause risk to increase or decrease in terms of both cost and perfomance. This consideration should be a part of the contracting officer's overall eavaluation in selecting a factor to apply for cost risk. It may be determined, for instance that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation may, as a result, be below the range which would otherwise apply for the contract type being proposed. The contract cost risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract cost represents subcontracts without any substantial transfer of contractor's risk.

(iii) In making a contract cost risk evaluation in the definitization of letter contracts, unpriced change orders, and unpriced orders under basic ordering agreements; consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances the total amount of cost risk may have effectively reduced. Under other circumstances, the contractor's cost risk may have remained substantially unchanged. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances; not just to the portion of costs incurred or percentage of work completed prior to definitization.

(iv) Service contracts, such as janitorial, guard servcie, etc., shall have a weight range for cost risk of 0 to 4 percent. There may be instances where a firm fixed-price contract, which is not priced on a labor-hour method, warrants additional consideration for contractor cost risk. In those circumstances, a weight of up to 4 percent is authorized. Conversely, a cost-plus-a-fixed-fee service contract normally should be priced using a zero cost risk factor.

(4) *Capital investment.* GSA contractors are normally encouraged to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. It is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. The evaluation of this factor for profit weights should include an analysis of the following:

(i) *Facilities.* To evaluate how this factor contributes to the profit objective requies knowledge of the level of facilities use needed for contract performance, the source of financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors who furnish their own facilities which significantly contribute to lower total contract costs should be provided with additional profit. Contractors who rely on the Government to provide or finance needed facilities should receive a corresponding reduction in profit. Situations between the above examples should be evaluated on their merits with either a positive or negative profit weight adjustment, as appropriate, being made. However, when a contractor who owns a large quantity of facilities is to perform a contract which does not benefit from these facilities, or where a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted.

(ii) *Payments.* In analyzing this factor, consideration should be given to the frequency of payments by the Government to the contractor. The key to this weighting is to give proper consideration to the impact the contract will have on the contractor's cash flow. Generally, for payments more frequent than monthly, negative consideration should be given, with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly with additional consideration given for payments less frequent than the contractor's or the industry's normal practice.

(5) *Cost control and other past accomplishments.* A contractor's past and present performance should be evaluated in such areas as quality of product or service, meeting performance schedules, efficiency in cost control (including need for and reasonableness of cost incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions, and management of subcontract programs. Where a contractor has consistently achieved excellent results in the foregoing areas as compared with other contractors in similar circumstances, such performance merits a proportionately higher profit weight is appropriate. A poor record in this regard should be reflected by a reduced or negative weight.

(6) *Federal socio-economic programs.* The contractor's policies and procedures which energetically support such Government programs and achieve successful results should be given positive consideration. Failure or unwillingness on the part of the contractor to support these programs should be assigned negative profit weight consideration.

(7) *Special situations and independent development.* (i) *Unusual pricing agreements.* Occasionally, unusual contract pricing arrangements are made with the contractor wherein they agree to participate in the sharing of contract costs. In such circumstances, a positiveprofit weight may be assigned for this factor commensurate with cost savings.

(ii) *Spin-off benefits.* A negative weight may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract (e.g., products with commercial application).

515.905–70 Nonprofit organizations.

(a) The structured approach was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and nonprofit organizations, the structured approach can be used as a basis for arriving at fee objectives for nonprofit organizations. Therefore, the structured approach, as modified in paragraph (b) below, shall be used to establish fee objectives for non-profit organizations. The modifications should not be applied as deductions against historical fee levels, but rather, to the fee objectives for such a contract as calculated under the structured approach.

(b) For purposes of this subparagraph, nonprofit organizations are defined as those entities organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

(c) For contracts with nonprofit organizations where fees are involved, an adjustment of up to 3 percent will be subtracted from the total profit-fee objective. In developing this adjustment, it will be necessary to consider the following factors:

(1) Tax position benefits;

(2) Granting of financing through letters of credit;

(3) Facility requirements of the nonprofit organization; and

(4) Other factors which may work to the advantage or disadvantage of the contractor in its position as a nonprofit organization.

Subpart 515.10—Preaward and Postaward Notifications, Protests, and Mistakes

515.1001 Notifications to offerors.

(a) The provisions of FAR 15.1001 and 515.407 regarding the issuance of advance notices of award shall be followed for negotiated contracts.

515.1070 Release of information concerning unsuccessful offerors.

(a) GSA Order, GSA Freedom of Information Act (FOI) procedure (see ADM 1035.11), should be consulted to determine what information may be disclosed.

(b) When small purchase procedures are used, the names and dollar amounts of unsuccessful offerors may be released upon request without processing through the formal FOI procedures.

(c) When the contracting officer determines, in connection with negotiated procurements (other than small purchases), that the administrative time and workload of processing regular FOIA requests (see FAR 14.408-1(c)) is greater than the workload involved in preparing an abstract of offers to be displayed at an appropriate Business Service Center, the following rules apply:

(1) An abstract of offers may be prepared for display after award in the appropriate Business Service Center in addition to the notification required by FAR 15.1001(c).

(2) The abstract must include only the names, addresses, and "best and final" prices offered, for unclassified acquisitions where the award is based on price and price related factors. The successful offeror(s) must be identified.

(3) Abstracts must not contain information regarding failure to meet minimum standards of responsibility or other notations properly exempt from disclosure to the public under FOI regulations.

(d) The information outlined in paragraph (c) above must not be disclosed when the contracting officer determines, on a case by case basis, that it is not in the best interest of the Government or when it may be competitively harmful to offerors such as when negotiations are in process for an item that was recently awarded under another solicitation.

[53 FR 30844, Aug. 16, 1988]

PART 516—TYPES OF CONTRACTS

Subpart 516.2—Fixed-Price Contracts

Sec.
516.203 Fixed-price contracts with economic price adjustment.
516.203-4 Contract clauses.
516.203-70 EPA in FSS multiple award schedules.

Subpart 516.3—Cost-Reimbursement Contracts

516.301 General.
516.301-3 Limitations.
516.306 Cost-plus-fixed-fee contracts.
516.307 Contract clause.

Subpart 516.4—Incentive Contracts

516.403 Fixed-price incentive contracts.
516.405 Contract clauses.

Subpart 516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

516.603 Letter contracts.
516.603-3 Limitations.

AUTHORITY: 40 U.S.C. 486(c).

Subpart 516.2—Fixed-Price Contracts

SOURCE: 50 FR 43714, Oct. 29, 1985, unless otherwise noted.

516.203 Fixed-price contracts with economic price adjustment.

516.203-4 Contract clauses.

(a) When the contracting officer makes a determination, in accordance with FAR 16.203-4(d), to use a clause which provides for adjustments based on cost indexes of labor or material, the clause shall be prepared with the advice and assistance of counsel and be approved by the contracting director. The contracting officer shall describe in the contract clause—

(1) The type of labor and/or material subject to adjustment;

(2) The labor rates, including fringe benefits (if any) and/or unit prices of materials that may be increased or decreased;

(3) The index(es) that will be used to measure changes in price levels and the base period or reference point from which changes will be measured; and

(4) The period during which the price(s) will be subject to adjustment.

(b) In Federal Supply Service (FSS) multiple award schedule (MAS) procurements the contracting director will make a determination, in accordance with FAR 16.203-2, to use an Economic Price Adjustment (EPA) clause. In making that determination, the term of the resulting MAS contract will be considered. An EPA clause will generally be included in multiyear contracts but normally will not be used in 1-year contracts. In 1-year contracts, when the contracting director has made a determination to use an EPA clause and the prices are to be negotiated on the basis of discounts from established catalog prices of products sold in substantial quantities to the general public, the contracting officer shall include the basic clause at GSAR 552.216-71 in MAS solicitations and contracts. In multiyear contracts, the alternate clause will be used under these conditions. These clauses are to be used instead of the FAR clauses at 52.216-2, 3, and 4.

516.203-70 EPA in FSS multiple award schedules.

(a) If the FSS multiple award schedule solicitation contains an Economic Price Adjustment clause, the contracting officer should establish negotiation objectives which reflect the terms of the clause with a view toward obtaining appropriate discounts. If the clause is not included in the initial solicitation but is negotiated in, it must be added to the schedule contract at the time of contract award. However, its inclusion is contingent on the approval of the contracting director, the need for an Economic Price Adjustment clause, and the concessions granted by the offeror for its inclusion in the contract.

(b) The contract price ceiling may be raised during the contract period only under the following conditions:

(1) Analysis of the current market conditions reveals that the original contract price ceiling is inadequate. This analysis shall be conducted in conjunction with the Office of Procurement (FC):

(2) The causes which require an increase in the price ceiling are not unique to an individual contractor, but

affect all suppliers for similar products. Determinations to raise the ceiling must be approved by the head of the contracting activity.

Subpart 516.3—Cost-Reimbursement Contracts

516.301 General.

[50 FR 43715, Oct. 29, 1985]

516.301-3 Limitations.

The determination and findings (D&F) required by FAR 16.301-3(c) shall be prepared in the format prescribed by GSAR 501.704-70(a)(1) and be signed by the appropriate official in accordance with Table 501-1 of this regulation (see GSAR 501.707).

[50 FR 43715, Oct. 29, 1985]

516.306 Cost-plus-fixed-fee contracts.

Signatory authority for the determination and findings (D&F), required by FAR 16.306(c)(2), is delegated to the heads of contracting activities or their designees (see GSAR 501.707).

[50 FR 43715, Oct. 29, 1985]

516.307 Contract clause.

The contracting officer shall insert the clause at 552.216-70, Fixed Fee Construction, in cost-plus-a-fixed-fee construction contracts when the contractor's fee is negotiated on the basis of performance of specified portions of the work by the contractor and subcontractor, respectively.

[49 FR 10834, Mar. 22, 1984]

Subpart 516.4—Incentive Contracts

516.403 Fixed price incentive contracts.

The determination and findings (D&F) required by FAR 16.403(c) shall be prepared in the format prescribed by GSAR 501.704-70(a)(1) and be signed by the appropriate official in accordance with Table 501.1 of this regulation (see GSAR 501.707).

[50 FR 43715, Oct. 29, 1985]

516.405 Contract clauses.

Award fee clauses developed by contracting officers, in accordance with FAR 16.405(e), shall be prepared with the advice and assistance of counsel and be approved by the contracting director.

[50 FR 43715, Oct. 29, 1985]

Subpart 516.6—Time-and-materials, Labor-Hour, and Letter Contracts

516.603 Letter contracts.

[50 FR 43715, Oct. 29, 1985]

516.603-3 Limitations.

(a) *General.* Signatory authority for the determination and findings (D&F) required by FAR 16.603-3 is delegated to the heads of contracting activities or their designees (see GSAR 501.707).

(b) *Architect-Engineer services.* (1) The proposed Architect-Engineer (A-E) must provide a price proposal for the non-design effort to be performed under the contract before the letter contract is awarded. The letter contract must:

(i) Not authorize the A-E to begin the design effort. The scope of the letter contract may include the design effort but the letter contract may only authorize the A-E to perform those services that are independent of the design effort (e.g., feasibility studies, existing facility surveys or site investigation, etc.) before the letter contract is definitized.

(ii) Include a definitization schedule that outlines (A) a date for submission of the design fee proposal, (B) a date for the start of negotiations, and (C) a target date for definitization. The schedule must provide for definitization of the contract within 90 days after the date of the letter contract instead of 180 days as outlined in FAR 16.603-2(c).

(iii) Limit the Government's liability to the amount necessary for the non-design effort to be performed under the contract by inserting that amount in the clause at FAR 52.216.24, Limitation of Government Liability.

(2) If the contracting officer must issue a unilateral price decision under FAR 16.603-2(c), the maximum contract amount must not exceed a reasonable price for the excludable items plus the 6 percent statutory fee limitation for the project.

[51 FR 39862, Nov. 3, 1986]

PART 517—SPECIAL CONTRACTING METHODS

Subpart 517.2—Options

Sec.

517.201 Definitions.
517.207 Exercise of options.

AUTHORITY: 40 U.S.C. 486(c).

Subpart 517.2—Options

SOURCE: 50 FR 10055, Mar. 13, 1985, unless otherwise noted.

517.201 Definitions.

"Priced Option" means an option where the prices for the option quantities or performance periods are specified in the contract at the time of award and the option prices are not subject to renegotiation or adjustment at the time the option is exercised unless a price adjustment clause is included in the contract.

"Unpriced Option" means an option where the prices for the option quantities or performance periods are not specified in the contract at the time of award and the option prices are negotiated at the time the option is exercised.

"Evaluated Option" means an option which is considered in the award evaluation.

"Unevaluated Option" means an option that is not considered in the award evaluation.

517.207 Exercise of options.

(a) If the synopsis for the original contract action described the option provisions in sufficient detail to comply with the requirements of FAR 5.207 and the option was evaluated, a synopsis of the option before it is exercised is not required. In those instances where the synopsis of the original contracts did not describe the option provisions or when the option was unevaluated, the option must be synopsised in accordance with FAR 5.207 before the option can be exercised.

(b) Unpriced options and unevaluated options are considered to be "new procurement" and the justification requirements of FAR Subpart 6.3 must be complied with before the option is exercised. A priced evaluated option which was properly synopsised as described in (a) above meets the full and open competition requirements of FAR Subpart 6.1 or the requirements of FAR Subpart 6.2 for full and open competition after exclusion of sources.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 519.2—Policies

Sec.
519.001 Definitions.
519.201 General policies.
519.202 Specific policies.
519.202-5 Data collection and reporting requirements.

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519.502 Setting aside acquisitions.
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519.503 Setting aside a class of acquisitions.

Subpart 519.6—Certificates of Competency and Determinations of Eligibility

519.602 Procedures.
519.602-1 Referral.
519.602-3 Resolving differences between the agency and Small Business Administration.

Subpart 519.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

519.705 Responsibilities of the contracting officer under the subcontracting assistance program.
519.705-4 Reviewing the subcontracting plan.
519.705-5 Awards involving subcontracting plans.
519.705-6 Postaward responsibilities of the contracting officer.
519.706 Responsibilities of the cognizant administrative contracting offices.
519.706-70 Monitoring contractor compliance with subcontracting plans.
519.770 Reporting requirements under subcontracting assistance program.
519.770-1 Report forms.
519.770-2 Responsibilities for subcontracting data collection.
Sec.
519.770-3 Reporting on contractual actions under section 211 of Pub. L. 95-507.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10835, Mar. 22, 1984, unless otherwise noted.

519.001 Definitions.

"Agency small business technical advisors" as used in this part, means the directors of the Business Service Center (or designees) in the regions and the individuals in the Federal Supply Service, Public Building Service, Information Resources Management Service, and Federal Property Resources Service that have been designated to serve as small business technical advisors in the Central Office. In addition to the duties outlined at FAR 19.201(c), the agency small business technical advisors perform the functions of the small and disadvantaged business utilization specialist/representative described in FAR 19.506 (a) and (b) and 19.705-4(d)(5).

[52 FR 16390, May 5, 1987]

Subpart 519.2—Policies

519.202 Specific policies.

(a) Each contracting activity shall make its best effort to identify procurements where a potential exists for increasing the small business share of contract awards. Contracting officers should seek the assistance of the agency small business technical advisor and Small Business Administration (SBA) procurement center representatives in locating qualified small business sources.

(b) The head of each contracting activity shall ensure that contracting personnel participate in training programs that emphasize the importance of the small business programs.

(c) Each Business Service Center (BSC) will keep all other BSC's and the Office of Small and Disadvantaged Business Utilization (AU) informed on items of mutual interest under the small business programs.

(d) Each BSC will:

(1) Take appropriate actions to publicize advance and current information about regional and national GSA business opportunities to the maximum extent feasible.

(2) Provide maximum advance and current information, assistance, and counseling of such nature, extent, and timeliness so as to enable small business concerns to take full advantage of the available business opportunities and to compete for contracts.

(3) Develop publications and public relations techniques designed to obtain maximum interest and participation of small business concerns. This activity will include, but not be limited to, the following:

(i) Arranging for and participating in meetings with business groups such as Chambers of Commerce, trade associations and similar organizations, State development corporations, Governors' and Mayors' advisory groups, local business and civic organizations, and small business councils.

(ii) Developing, preparing, and distributing informational material designed to stimulate interest on the part of small business concerns.

(iii) Developing interest and cooperation on the part of trade publications, the local press, and other media.

(e) Proposed regulations and procedures affecting the operation of the small business program must be coordinated with the Office of Small and Disadvantaged Business Utilization (AU) prior to issuance.

[49 FR 10835, Mar. 22, 1984, as amended at 52 FR 16391, May 5, 1987]

519.202–5 Data collection and reporting requirements.

(a) *Responsibilities.* (1) The Office of Small and Disadvantaged Business Utilization (AU) is responsible for collecting section 8(a) award information from regional office Business Service Centers and Central Office Small Business Technical Advisors and preparing a cumulative report.

(2) Regional contracting officers are responsible for submitting section 8(a) contract award information to the regional Business Service Center (BSC).

(3) Central Office contracting officers are responsible for submitting the section 8(a) contract award information to their respective Central Office Small Business Technical Advisors.

(4) The regional Business Service Centers and the Central Office Small Business Technical Advisors are responsible for submitting the section 8(a) contract award information to AU as an attachment to the GSA Form 3077, FY 19—, Procurement Preference Program Goal Achievement. This data is required on the 20th calendar day following the end of each quarter.

(b) *Reporting procedures.* (1) The contracting officer shall complete and submit a GSA Form 2677, Minority Contract Fact Sheet, to the regional BSC or the appropriate Central Office Small Business Technical Advisory at the time of award. The BSC or Central Office Small Business Technical Advisor shall forward the GSA 2677's to the Office of Small and Disadvantaged Business Utilization (AU) on a quarterly basis as an attachment to the GSA Form 3077.

(2) All amendments or modifications to existing section 8(a) contracts must be reported on a separate GSA Form 2677.

[52 FR 16391, May 5, 1987]

Subpart 519.3—Determination of Status as a Small Business Concern

519.302 Protesting a small business representation.

In connection with the processing of a protest of a small business representation of an offeror, if the SBA determines that the offeror is not a small business and there is any evidence that the offeror knowingly or willfully misrepresented itself as a small business, the contracting officer should refer the matter to the Office of the Inspector General (J) for investigation and referral to the Department of Justice and/or the GSA debarring official if appropriate.

[52 FR 16391, May 5, 1987]

519.304 Solicitation provisions.

(a) The contracting officer shall insert the provision at 552.219-1, Small Business Concern Representation, in all solicitations instead of the provision at FAR 52.219-1.

(b) The contracting officer shall insert a provision substantially the same as one of the provisions at 552.219-70, Standard Industrial Classification and Small Business Size Standard, in each solicitation, including requests for quotations issued under small purchase procedures. In accordance with FAR 19.102(b)(3) and FAR 19.303(a), the contracting officer shall determine the appropriate product or service classification and related size standard and include them in the solicitation using one of the provisions at 552.219-70.

[52 FR 16391, May 5, 1987]

Subpart 519.5—Set-Asides for Small Business

519.502-1 Requirements for setting aside acquisitions.

Contracting officers shall set aside all procurements qualifying therefor, as provided in FAR Subpart 19.5. Where the contracting officer determines that a small business set-aside of a procurement is not feasible, the procedures defined in 519.502-70 must be followed. Contracting officers shall periodically review individual set-asides to identify commodities and services suitable for class set-asides.

[53 FR 33812, Sept. 1, 1988]

519.502-3 Partial set-asides.

(a) *Initiating partial set-asides.* Contracting officers shall continuously review the items for which they have procurement responsibility (both national and regional requirements) and make partial small business set-asides as provided herein. Particular attention must be given to high volume items which are not totally set aside and which have a potential for being partially set-aside. Partial set-asides for stock items may be made when the following Economic Order Quantity (EOQ) factors are present:

(1) For annual contracts, an EOQ factor not exceeding 3 months; and

(2) For 6-month contracts, an EOQ factor not exceeding 1 month.

(b) *Preparation of solicitation.* The contracting officer shall insert the clause at 552.219.71, Allocation of Orders—Partially Set-Aside Items, in solicitations for requirements type supply contracts that ate partially set aside for small business.

(c) *Contract award.* When the set-aside portion of an item is to be awarded to the same concern as the corresponding non-set-aside portion of an item, such an award must be documented by issuing a separate contract as if two different concerns are involved.

(d) *Procurement of unawarded set-aside portions.* If the entire set-aside portion cannot be awarded under the partial set-aside procedures, the unawarded portion must be procured by sealed bidding or negotiation, as appropriate, in accordance with FAR 19.502-3.

(e) *Partial coverage.* When only the non-set-aside portion of the procurement is awarded prior to the expiration of the current contract, contractual documents covering the transaction must be distributed to the ordering activities to provide at least partial coverage of the requirements.

(f) *Contract coding.* To assure that set-asides are properly identified for reporting purposes, information regarding awards based on partial or total set-asides shall be included on GSA Form 1535, Recommendation for Award(s), as appropriate. Further, if a class set-aside is involved, the face of the GSA Form 1535 must be annotated as follows: "Class set-asides apply to items ———."

(g) *Ordering procedures.* The Inventory Manager is responsible for ensuring that the specified division of orders is made in accordance with the clause at 552.219-71 in those cases where two contractors are to supply the same item(s).

[52 FR 16392, May 5, 1987]

519.502-70 Review of non-set-aside determinations.

(a) If the contracting officer decides that a procurement that is expected to exceed $25,000 cannot be set aside for small business, the reasons for the decision must be recorded on the GSA Form 2689, Procurement Not Set Aside. The GSA Form 2689 must be submitted to the agency small business technical advisor for review and coordination with the Small Business Administration (SBA).

(b) The agency small business technical advisor will provide a copy of the GSA Form 2689 to the SBA representative as soon as possible so that the review of the contracting officer's determination can be made by GSA and SBA within the timeframe provided in paragraph (c) of this section.

(c) Review of the contracting officer's determination should normally be completed by GSA and SBA officials within 5 workdays. GSA and SBA reviewing officials should notify the contracting officer if additional time is needed and request an extension of time to complete the review.

(d) Before the GSA or SBA reviewing Officials provide additional small business sources to the contracting officer when requesting reconsideration of the non-set-aside determination, the reviewing officials shall contact the sources to ensure the source is interested in submitting an offer and to obtain information regarding the capability of the source to fulfill the Government's requirements. The information obtained should be provided to the contracting officer for consideration.

(e) If the agency small business technical advisor recommends that the contracting officer set the procurement aside and the contracting officer still believes the procurement should be unrestricted, the matter must be referred to the contracting director's first level supervisor for a decision.

(f) If the SBA representative recommends that the contracting officer set the procurement aside and the contracting officer rejects the recommendation, the contracting officer shall comply with the provisions of FAR 19.505.

(g) The contracting officer shall suspend action on the acquisition when there is a disagreement on the set aside determination unless the contracting officer determines that proceeding to contract award and performance is in the public interest. The contracting officer shall not make a public interest determination under FAR 19.505(f) of this section, unless the acquisition represents a case of unusual and compelling urgency where the Government would be seriously injured if the contracting officer does not proceed.

[52 FR 16392, May 5, 1987]

519.503 Setting aside a class of acquisitions.

(a) *Clarification of class set-aside definition.* In further explanation of FAR 19.503, a class set-aside may consist of an item (or service), a group of related items under a Federal Supply Class (FSC), or a whole FSC class when restricted to small business on more than a one-time basis, as distinct from a one-time basis. Under this definition, a single item or a group of items restricted to small business on more than a one time basis, even though constituting only a small portion of an FSC class, is defined as a class set-aside.

(b) Class set-aside determinations must be documented in the format set forth below:

SMALL BUSINESS CLASS SET-ASIDE DETERMINATION

In accordance with FAR 19.502.2, it is hereby determined that procurements by the (*name of contracting activity*) of the following commodities or services shall be set aside for small business concerns on a class basis. This determination does not apply to any individual procurement for which small purchase procedures are to be used and applies only to the contracting activity named above.

(List items or services)

The above format should be appropriately modified with respect to any class of procurements proposed to be partially set-aside. It must be signed by the contracting officer having procurement responsibility for the class of commodities or services involved, approved by the appropriate contracting director or a designee, and placed in the contract file.

[52 FR 16392, May 5, 1987]

Subpart 519.6—Certificates of Competency and Determinations of Eligibility

519.602 Procedures.

[52 FR 16393, May 5, 1987]

519.602-1 Referral.

When a small business concern has been determined to be nonresponsible, the contracting officer shall refer the matter to the cognizant SBA Regional Office. The referral must be prepared in accordance with FAR 19.602-1(c).

[52 FR 16393, May 5, 1987]

519.602-3 Resolving differences between the agency and the Small Business Administration (SBA).

(a) The SBA Regional Office will provide advance notice to the contracting officer of its intention to issue or recommend issuance of a Certificate of Competency (COC). If there are sufficient grounds to appeal the action, the contracting officer shall request that the SBA Regional Office refer the case to the SBA Central Office and, within 5 working days after making the request, shall prepare and forward the following information to the GSA Office of Small and Disadvantaged Business Utilization (AU):

(1) Copies of all correspondence between GSA and SBA concerning the case, including initial notice to SBA that a small business has been found nonresponsible;

(2) Copies of all technical documents sent to SBA along with the notice (i.e., solicitation, preaward surveys, abstract of offers, if any, etc.);

(3) A fact sheet detailing all pertinent information to support an appeal action to SBA, including any new information and a justification of the contracting officer's decision to continue the appeal.

(b) If the SBA Central Offices informs the contracting officer that it concurs with its Regional Office's intention to issue a COC, the documentation available clearly supports an appeal, and the contracting officer believes an appeal to be in the best interest of the Government, the contracting officer shall contact the Office of Small and Disadvantaged Business Utilization (AU) and request that AU formally appeal the SBA decision on the agency's behalf. After considering all the facts and conferring with the applicable contracting activity, AU will decide whether or not to file a formal appeal. Before a decision is made not to appeal, AU shall notify the applicable Central Office Service. Once a decision is made regarding the appeal, the contracting officer will be notified.

[52 FR 16393, May 5, 1987]

Subpart 519.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

519.705 Responsibilities of the contracting officer under the subcontracting assistance program.

[52 FR 34388, Sept. 11, 1987]

519.705-4 Reviewing the subcontracting plan.

Prior to award, the agency small business technical advisors and the SBA procurement center representatives (if any) shall be given the opportunity to review subcontracting plans and provide recommendations in accordance with FAR 19.705-4. The GSA Form 3584, Checklist for Review of Subcontracting Plan, must be used by procuring contracting officers (PCO's) and small business technical advisors (SBTA's) when reviewing subcontracting plans. Its use by SBA procurement center representatives is optional.

[52 FR 34388, Sept. 11, 1987]

519.705-5 Awards involving subcontracting plans.

(a) When the contractor has submitted an individual contract plan, the contracting officer shall transmit copies of Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, to the contractor at the time of contract award. A letter which reads substantially as follows should be used for this purpose:

Name
Address
City, State, Zip Code
Re: Subcontracting Plan Reports
Contract No. ______
Dear ______:

Your individual contract plan, submitted pursuant to the Small Business and Small Disadvantaged Business Subcontracting Plan clause of your contract, has been approved. The clause also requires you to submit periodic subcontracting reports on Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and Standard Form (SF) 295, Summary Subcontract Report. The SF 294 report is used to report subcontracting activity under this contract. The report is due semiannually (within 25 days after March 31st and September 30th) and at contract completion.

The SF 295 report is used to report the aggregate of subcontracting activity under all your GSA contracts. The report is due quarterly (within 25 days after December 31st, March 31st, June 30th, and September 30th). The report is cumulative from quarter to quarter, and the final report for the year should cover the period from October 1-September 30, which is the Government fiscal year. A new reporting cycle begins October 1st of each year.

Please send the SF 294 report to: (*address of contracting office administering the contract*), and send a copy to: (*address of regional Business Service Center in the region of contract award, or appropriate Central Office small business technical advisor for Central Office awards*).

Please send the SF 295 to the GSA Office of Small and Disadvantaged Business Utilization, (AU), 18th and F Streets, NW, Washington, DC 20405. The SF 294 and SF 295 report forms are enclosed.

Sincerely,

Contracting Officer
Enclosures (SF 294's and SF 295's)

(b) When the contractor has submitted a company-wide plan for commercial products, the contracting officer shall transmit copies of the Standard Form 295, Summary Subcontract Report, to the contractor at the time of contract award. (See 519.770-1(b)(2) for exception.) A letter which reads substantially as follows should be used for this purpose:

Name
Address
City, State, Zip Code
Re: Subcontracting Plan Reports
Contract No.——————————

Dear ———:

Your company-wide plan for commercial products, submitted pursuant to the Small Business and Small Disadvantaged Business Subcontracting Plan clause of your contract, has been approved by (*name, address, and telephone number of approving official*). The clause also requires you to submit periodic subcontracting reports on Standard Form (SF) 295, Summary Subcontract Report.

The SF 295 is an annual report and is due on or before October 25th of each year. The reporting period is October 1-September 30, i.e., the Government fiscal year. The report should summarize subcontracting activity under company-wide plans for commercial products in effect during the reporting period.

Please send this report to: (*address of contracting office administering the contract*); and send a copy to the GSA Office of Small and Disadvantaged Business Utilization (AU), 18th & F Streets, NW., Washington, DC 20405. SF 295 report forms are enclosed.

Sincerely,

Contracting Officer
Enclosure (SF 295's)

[52 FR 34388, Sept. 11, 1987]

519.705-6 Postaward responsibilities of the contracting officer.

(a) In addition to the requirements of FAR 19.705-6, contracting officers shall notify the GSA Business Service Center in the region of contract award or the appropriate Central Office small business technical advisor (for Central Office awards) of each contract award or contract modification of $500,000 or more ($1 million or more for construction) that contains a subcontracting plan.

The notice of award must contain the following information:

(1) Contractor's name, address, phone number.

(2) Subcontracting plan, administrator's name, address, phone number.

(3) Contract number.

(4) Place of performance.

(5) Dollar amount of contract award.

(6) Period of contract performance.

(7) Description of contract items.

(8) Contracting officer's name, address, phone number.

(9) Administrative contracting office address, phone number.

(10) Type of plan (individual or company-wide).

(b) The subcontracting plan checklist may serve as the notice of award, except in the case of contracts incorporating previously approved company-wide plans. In this case, notice of award as described in paragraph (a) of this section will be necessary as there will be no subcontracting plan checklist. The Business Service Centers and the small business technical advisors shall retain these documents in their files.

[52 FR 34388, Sept. 11, 1987]

519.706 Responsibilities of the cognizant administrative contracting officer.

[53 FR 33812, Sept. 1, 1988]

519.706-70 Monitoring contractor compliance with subcontracting plans.

(a) Contract administration may be performed by the procuring contracting officer who awarded the contract or it may be delegated to an administrative contracting officer (ACO). When contract administration is delegated, the subcontracting plan must be included in the contract file transmitted to the contract administration office.

(b) The contracting officer administering contracts with subcontracting plans shall monitor timely receipt of SF 294 and/or SF 295 reports and review the reports for progress in meeting subcontracting plan goals. If goals are not met, the contractor must be required to explain the shortfall on the subcontracting reports and may be required to submit evidence of their outreach efforts to locate and provide subcontracting opportunities to small business and small disadvantaged business concerns. The requirement for compliance with plans may be fulfilled by evidence of satisfactory outreach efforts, as described in the plan, as well as by meeting plan goals.

(c) In the case of company-wide plans approved by GSA, the first contracting officer who enters into a contract with a company during the company's fiscal year approves the plan and monitors receipt of reports and compliance with the plan. This responsibility is generally assigned to the ACO if contract administration is delegated. Subsequent GSA contracts awarded during the company's same fiscal year and incorporating the previously approved plan will not require submission of subcontracting reports.

(d) In the case of company-wide plans approved by another agency, the first GSA contracting officer entering into a contract with the company during company's same fiscal year in which the plan was approved required the contractor to submit the SF 295 report and monitors receipt of the report. No other monitoring of this plan is required by GSA.

(e) Contractor compliance with plans must be documented in accordance with FAR 19.706 and must be considered by the contracting officer when determining contractor responsibility for future awards. In case on noncompliance, the contracting officer shall notify the Office of Small and Disadvantaged Business Utilization (AU) through the appropriate Small Business Technical Advisor (SBTA).

[53 FR 33812, Sept. 1, 1988]

519.770 Reporting requirements under subcontracting assistance program.

[52 FR 34389, Sept. 11, 1987]

519.770-1 Report forms.

(a) *Standard Form 294, Subcontracting Report for Individual Contracts.* This report is required for reporting subcontracting activity under contracts with individual contract plans. A separate report must be made on this form for each contract with an individual contract plan. This report is not required for company-wide plans for commercial products.

(1) Contractors shall submit the SF 294 report to the contracting office administering the contract and a copy to the GSA Business Service Center in the region of contract award or, for Central Office awards, to the appropriate Central Office small business technical advisor.

(2) Reports are due semiannually (within 25 days after March 31st and September 30th) and at contract completion.

(b) *Standard Form 295, Summary Subcontract Report.* This form is required for reporting subcontracting activity under both individual contract plans and company-wide plans for commercial products.

(1) *Individual contract plans.* (i) Contractors shall submit the SF 295 reports to the contracting office administrating the contract and to the Office of Small and Disadvantaged Business Utilization (AU).

(ii) The reports are quarterly, and are due 25 days after the end of each Government quarter (December 31st, March 31st, June 30th, and September 30th).

(iii) The reports are cumulative from quarter to quarter and aggregate subcontracting activity under all GSA contracts held by the contractor, except those covered by company-wide plans for commercial products.

(2) *Company-wide plans for commercial products.* (i) Contractors shall submit the SF 295 reports to the contracting office administering the contract and a copy to the Office of Small and Disadvantaged Business Utilization (AU). *Note:* This instruction applies only for the first GSA contract covered by a company-wide plan awarded during the contractor's fiscal year. Contractors are not required to submit SF 295 reports for subsequent contracts awarded during their current fiscal year and covered by the same commercial products plan.

(ii) When a contractor has a commercial products plan previously approved by another GSA contracting activity or another Federal agency for the company's fiscal year, the GSA contracting officer shall request a copy of the plan and the agency approval document and include them in the contract file. The plan must also be included in and made a part of the resultant contract.

(iii) Reports are due annually, on or before October 25th of each year. The reports should cover the contractor's subcontracting activity under company-wide plans for commercial products in effect during the reporting period, which is October 1st to September 30th (Government fiscal year).

[52 FR 34389, Sept. 11, 1987, as amended at 53 FR 33813, Sept. 1, 1988]

519.770-2 Responsibilities for subcontracting data collection.

(a) The Office of Small and Disadvantaged Business Utilization (AU) is responsible for collecting subcontracting data from the regional Business Service Centers and Central Office small business technical advisors.

(b) The regional Business Service Centers and Central Office small business technical advisors are responsible for forwarding copies of all notices of contract awards and subcontracting plan checklists to the Office of Small and Disadvantaged Business Utilization (AU) by the 20th day after the end of each Government quarter.

[52 FR 34389, Sept. 11, 1987]

519.770-3 Reporting on contractual actions under section 211 of Pub. L. 95-507.

(a) *Contracting office reporting requirements.* A quarterly report of the number and dollar value of contracts awarded in excess of $500,000 ($1 million for construction) requiring subcontracting plans must be prepared and submitted as indicated below. Report Control Symbol ADM 64 is assigned to this report. Negative reports are required.

(1) *Regional contracting offices.* The reports must be submitted to the regional Business Service Centers (BSC's) by the 10th calendar day after the end of each quarter. The BSC's will forward the reports to AU by the 20th calendar day following the end of the quarter.

(2) *Central Office contracting offices.* The reports must be submitted to the appropriate SBTA by the 10th calendar day after the end of each month. The SBTA's will forward the reports to AU by the 20th calendar day following the end of the quarter.

(b) *Report format.* The following format is prescribed for the quarterly report.

Reporting Office ____________

Quarter beginning ____________

ending ____________

REPORT ON CONTRACTING ACTIONS UNDER SECTION 211 OF PUBLIC LAW 95-507

(contracts estimated or actual value over $500,000 [$1 million for construction])

NOTE: Do not include Contracts with Small Business Concerns.

1. Total number of contracts awarded over $500,000 ($1 million for construction)	No ______ $ value ______
2. Contracts awarded over $500,000 ($1 million for construction) which contain subcontracting plans	No ______ $ value ______

Contracts awarded over $500,000 ($1 million for construction) without subcontracting plans. (Attach written justification for each contract awarded without a plan, see FAR 19.705-2)	No.________ $ value ________

(End of format)

[53 FR 33813, Sept. 1, 1988]

PART 520—LABOR SURPLUS AREA CONCERNS—[RESERVED]

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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Subpart 522.14—Employment of the Handicapped

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10838, Mar. 22, 1984, unless otherwise noted.

Subpart 522.1—Basic Labor Policies

522.101 Labor relations.

522.101-1 General.

The contracting officer shall include the clause at FAR 52.222-1, Notice to the Government of Labor Disputes, in solicitations and contracts in all acquisitions involving items on the DOD Master Urgency List and in any other contract of a class or kind which the head of the contracting activity concerned determines to be appropriate for the use of such a clause (see FAR 22.101-1(e)).

522.103 Overtime.

522.103-4 Approvals.

The head of the program office or his/her designee is the agency official responsible for approval of overtime.

Subpart 522.3—Contract Work Hours and Safety Standards Act

522.302 Liquid damages and overtime pay.

The provisions of 522.405-13 apply to all contracts covered by the Contract Work Hours and Safety Standards Act, including construction contracts.

[49 FR 10838, Mar. 22, 1984, as amended at 51 FR 32655, Sept. 15, 1986]

522.303 Administration and enforcement.

The procedures and reports required in 552.405 in connection with the Contract Work Hours and Safety Standards Act apply to all contracts covered by that Act, including construction contracts.

Subpart 522.4—Labor Standards for Contracts Involving Construction

522.400 Scope of subpart.

This subpart sets forth the labor standards applicable to construction contracts, including the policies and procedures and the statutory basis for these standards.

522.401 Applicability.

The requirements of this Subpart 522.4 apply to construction contracts estimated to exceed $2,000 and, under some circumstances, to other types of contracts involving construction. For purposes of implementing the labor standards, the terms as defined in 29 CFR 5.2 shall govern.

522.401-1 Construction contracts.

(a) A contract is for construction if it is solely or predominantly for construction as defined in 29 CFR 5.2(j).

(1) These requirements are applicable only if the construction work is, or reasonably can be foreseen to be, performed at a particular site so that wage rates can be determined for the locality.

(2) These requirements do not apply to contracts solely for dismantling, demolition, or removal of improvements, though certain of the statutes mentioned herein may apply to such contracts as prescribed in FAR Subpart 37.3.

(3) These requirements apply to manufacture or fabrication of materials and components on the site by a construction contractor or subcontractor under a contract otherwise subject to these requirements but do not apply to other manufacturing or furnishing of equipment, components, or other materials.

(4) These requirements do not apply to employees of railroads operating under collective bargaining agreements that are subject to the provisions of the Railway Labor Act.

(b) Under contracts for construction as described in 522.401-1(a), the requirements of this subpart apply only to work performed by mechanics and laborers at the site of the work as defined in 29 CFR 5.2.

(1) "Laborer" or "mechanic" are construed to include at least those workers whose duties are manual or physical in nature as distinguished from mental or managerial whether employed by a prime contractor or by a subcontractor of any tier. The term includes any workers who work with tools or equipment or perform the work of a trade, apprentices and trainees, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards. The term does not apply to employees whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR Part 541 are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties and do not meet the criteria of 29 CFR Part 541, are laborers and mechanics for the time so spent. Every person performing the duties of a laborer or mechanic is employed regardless of any contractual relationship alleged to exist between the contractor and such person.

(2) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and to other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site" because of proximity. For example, if a small office building is being erected, the "site of the work" will normally include no more than the building itself and its grounds and other land or structures "down the block" or "across the street" which the contractor or subcontractor uses in the course of his performance on the particular contract. In the case of larger contracts such as for a large building, an airport, or a dam, the "site of the work" is necessarily more extensive and includes the whole area in which the contract construction activity will take place. Fabrication plants "mobile factories," batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided they are dedicated exclusively or nearly so to performance on the contract and are so located in proximity to the actual construction location that it would be reasonable to include them. Once the limits of "site of the work" have been determined, the Secretary's wage rate decision is applicable only to those mechanics and laborers employed by a contractor or subcontractor within such limits (that is, upon the "site of the work"), including drivers who temporarily leave the "site" to transport materials and equipment used in the course of contract operations. Not included in the "site of the work" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work". Such permanent, previously etablished facilities are not a part of the "site of the work", even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(3) Other terms (i.e., contract building, work, public building, public work, and wages) shall have the meaning as defined in 29 CFR 5.2.

522.401-2 Supply, service, maintenance, or other contracts involving construction.

(a) The requirements of this Subpart 522.4 do not ordinarily apply to supply, service, maintenance, research and development, or other nonconstruction contracts. However, contracts predominantly for nonconstruction work may also involve construction work. Construction items under such contracts are not exempted from the requirements of this subpart simply because the work is to be performed under a contract which also requires, for example, the furnishing of supplies. On the other hand, where construction work is to be performed in support of other work such as manufacturing and furnishing of supplies, the circumstances may be such that the construction work may be so merged with nonconstruction activity or may be so fragmented in terms of the locations or time spans in which it is to be performed that it cannot be segregated as a separate contractual requirement for construction, alteration, or repair of a public building or public work. Generally, the requirements apply to and the appropriate clauses in 552.222-70 through 552.222-82, must be included in, a prime contract if:

(1) The contract contains specific requirements for substantial amounts of construction work, or it is ascertainable at the contract date that a substantial amount of construction work will be necessary for the performance of the contract. The word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract; and

(2) Such construction work is physically or functionally separate from and, as a practical matter, is capable of being performed on a segregated basis from the other work required by the contract.

(b) The standard clauses will be applicable to the contract work only to the extent that such work is subject to the labor standards statutes involved. Under contracts requiring substantial amounts of segregable construction work, only such segregable construction will be covered.

(1) For example, the requirements do not apply to installation, maintenance, and alteration work incidental to furnishing supplies under a supply contract; however, if a substantial and segregable amount of construction, alteration, or repair work at the site is required, such as for installation of heavy generators and large refrigerator systems or for plant modification or rearrangement, the labor standards for construction contracts apply to the construction work at the site.

(2) Contracts for maintenance or service are not ordinarily subject to the requirements of this subpart. Maintenance includes the routine, recurring type of work necessary to keep a facility in such condition that it may be continuously used at an established capacity and efficiency for its intended purpose. However, if such maintenance or service contracts call for substantial and segregable items of construction, alteration, or repair, the labor standards provisions for construction contracts will be applicable to those items. All contracts in excess of $2,000 for painting of any public building or public work, whether performed in connection with the original construction or as regular maintenance, are subject to the labor standards provisions for construction contracts.

522.402 Statutory and regulatory requirements.

522.402-1 Davis-Bacon Act.

(a) The Davis-Bacon Act (Act of March 3, 1931, as amended (40 U.S.C. 276a—276a-7)) provides that certain contracts over $2,000 entered into by any executive agency for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States shall contain a clause (see 552.222-70) to the effect that no laborer or mechanic employed directly upon the site of the work contemplated by the contract shall receive less than the prevailing wage rates determined by the Secretary of Labor.

(b) The wage rate determination applies only to those laborers and mechanics employed by a contractor or subscontractor within the limits of the site of the work. Wages include the basic hourly rate of pay, the rate of contribution irrevocably made by an employer pursuant to a fund, plan, or program, and the rate of costs to the employer which may be reasonably anticipated in providing certain bona fide fringe benefits.

(c) Laborers and mechanics employed at the site must be paid at least weekly and without deduction or subsequent rebate except as authorized by statute or regulation.

(d) Each worker must be assigned an authorized classification which accurately describes the duties performed in conformance with recognized practices in the construction industry and in the area. For example, if a laborer performs the work of a journeyman for any portion of the time employed on the contract, that person must be so classified and receive the wages of a journeyman for that part of the time engaged in work at journeyman level. Employees performing work in more than one capacity, such as three hours a day as a laborer and five hours a day as a carpenter must be classified accordingly and paid the applicable wage rate specified in the contract wage schedule for the specific work performed in each classification. If the contractor fails to show dual classification in such cases, payment shall be required at the higher rate for all hours worked.

(e) Violations of Davis-Bacon provisions may be grounds for termination of contract.

522.402-2 Copeland Act.

The Copeland ("Anti-kickback") Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force or otherwise, any person employed in the construction or repair of public buildings, public works, financed in whole or in part by the United States, to give up any part of the compensation to which the person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly statements of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Act shall contain a clause (see GSAR 552.222-74) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

[50 FR 2287, Jan. 16, 1985]

522.402-3 Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), requires that certain contracts contain a clause (see FAR 52.222-4), specifying that a laborer or mechanic doing any part of the work covered by the contract may not be required or permitted to work more than 40 hours in any workweek unless the laborer or mechanic is compensated at not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in any workweek. For violations of the excess hours provisions of the act, the contractor is liable for restitution of unpaid wages to the employee and for the payment of liquidated damages to the Government at a rate of $10 per calendar day for each employee who was required or permitted to work overtime hours in violation of the act. For conditions under which a contractor may be relieved of the assessment of liquidated damages, see GSAR 522.405-13. Procedures to be followed in withholding funds to cover underpayments to employees are prescribed in GSAR 522.405-9 and GSAR 522.405-10.

(b) In addition to the requirements under GSAR 522.402-3(a), the act provides that employers must not require any laborer or mechanic to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety, as determined under construction safety and health standards issued by the Secretary of Labor. Violation of the safety and health standards provisions of the act may be cause for termination of the contract.

[51 FR 32655, Sept. 15, 1986]

522.402-4 Department of Labor regulations.

Under the statutes referred to in this 522.402 and Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. Appendix), the Secretary of Labor has issued regulations in Title 29, Subtitle A, Code of Federal Regulations as follows:

(a) Part 1 provides procedures for the predetermination of Davis-Bacon wage rates;

(b) Part 3, describes the Copeland Act requirements;

(c) Part 5, provides for the administration and enforcement of the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act;

(d) Part 6, provides rules of practice for administrative proceedings enforcing labor standards in construction and service contracts; and

(e) Part 7, describes the Department of Labor Wage Appeals Board procedures.

522.403 Contract clauses.

(a) Except as required by 522.403 (b) and (c), every construction contract in excess of $2,000 (or of such other amount as may be specifically indicated) for work within the United States shall include the following clauses:

Davis-Bacon Act (40 U.S.C. 276a—276a-7) clause at 552.222-70.
Contract Work Hours and Safety Standards Act Overtime Compensation clause at FAR 52.222-4.
Apprentices and Trainees clause at 552.222-72.
Payrolls and Basic Records clause at 552.222-73.
Compliance with Copeland Act Requirements clause at 552.222-74.
Withholding clause at 552.222-75.
Subcontracts clause at 552.222-76.
Contract Termination; Debarment clause at 552.222-77.
Disputes Concerning Labor Standards clause at 552.222-78.
Compliance with Davis-Bacon and Related Act Requirements clause at 552.222-79.
Certification of Eligibility clause at 552.222-80.
Applicable Minimum Hourly Rates of Wages clause at 552.222-81.

(b) In construction contracts with State or political subdivisions, the clauses prescribed in 522.403(a) shall be inserted, but prefaced by the clause at 552.222-82.

(c) Every construction contract in excess of $2,000 for work outside the United States, but which is nevertheless subject to the Contract Work Hours and Safety Standards Act as set forth in FAR Subpart 22.3, shall include the Contract Work Hours and Safety Standards Act Overtime—Compensation clause at FAR 52.222-4.

[49 FR 10838, Mar. 22, 1984, as amended at 51 FR 32655, Sept. 15, 1986]

522.404 Wage determinations.

522.404-1 Types of wage determinations.

(a) A notice of the general wage determination is published in the FEDERAL REGISTER. The wage determination is used by all Government agencies. It specifies prevailing wage rates for the types of construction named in the determination for use in contracts performed within a given geographical area. The determination remains in effect until modified, superseded, or canceled by a notice in the FEDERAL REGISTER. The determination must be used whenever possible. They are issued at the discretion of the Department of Labor upon agency request or on the initiative of the Department of Labor. The General Wage Determinations Issued Under The Davis-Bacon and Related Acts are available to contracting offices by subscription. Subscriptions may be obtained by contacting: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or telephone (202) 783-3238.

(b) A project wage determination, as the term is used herein and in 29 CFR Part 1, applies to both individual and installation determinations. A project wage determination is issued for use by the requesting Federal agency. It provides rates for work described in the determination that may be required by contract in a specific geographical area (usually an installation or county) during the life of the determination. This type of determination is used only when no general wage determination is in effect, and may be obtained when continuing construction activity is anticipated at an installation or within the particular geographical area. These wage determinations are generally effective for 180 calendar days.

[49 FR 10838, Mar. 22, 1984, as amended at 51 FR 32655, Sept. 15, 1986]

522.404-2 Procedure for requesting determinations.

(a) *Requests for wage determinations.* A request for a general wage determination may be submitted to the Administrator, Wage and Hour Division, Department of Labor, if—

(1) The wage patterns for the particular type of construction are well settled in the area;

(2) No general wage determination published in the FEDERAL REGISTER is in effect for the particular type of construction in the area; and

(3) The agency anticipates a large volume of the particular type of construction in the area. The request shall include the information in paragraph (c) below.

(b) *Requests for installation type project wage determinations.* A contracting agency shall submit requests for installation wage determinations on Standard Form 308, Request for Determination and Response to Request, to the Department of Labor address at 522.404-2(c). The request shall include the information in 522.404-2(c) and the following:

(1) The incidence of use of the last previously issued installation determination, the total dollar amount of the contracts awarded thereunder, and an estimate of the use of any new determination during its 180-day life.

(2) A complete rationale for requiring an installation determination.

(3) The estimated cost of each project.

(4) The kinds of laborers and mechanics likely to be employed.

(c) *Requests for individual type project wage determinations.* Requests shall be submitted in accordance with agency procedures on a completed SF 308, to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Contract Wage Determinations, Washington, DC 20210. The request shall indicate only those craft classifications that are needed in the performance of the work. Classifications may be added if they cannot be fitted into classifications on the form, or if they are generally recognized in the area or in the construction industry. Requests shall include—

(1) The location of the project or installation, giving the distance in miles and the direction from the nearest point of reference;

(2) A sufficiently detailed description of the work to indicate the type of construction involved (i.e., building, heavy, highway, residential, or other type); and

(3) Any available pertinent wage payment information, unless the wage patterns in the area are clearly established.

(d) *Time of submission of requests.* Agencies shall submit requests for wage determinations to the Department of Labor at least 30 calendar days before they are required for use in solicitation for sealed bids or for entering into negotiations of the contract for which the determinations are sought.

(e) *Limitations.* Individual and installation wage determinations are effective for 180 calendar days from the date of the determination and are applicable only to contract awards made within that period. Individual wage determinations may not be applied to contracts other than the one for which they are issued.

(f) *Review of wage determination decisions.* Immediately upon receipt, the contracting agency shall examine the wage determination and inform the Department of Labor of any changes necessary or appropriate to correct errors. Private parties requesting changes should be advised to submit their requests to the Department of Labor.

[49 FR 10838, Mar. 22, 1984, as amended at 50 FR 10055, Mar. 13, 1985]

522.404-3 Wage Determinations in solicitations and contracts.

(a) *Rate schedule to be included in solicitations.* (1) In an area covered by a general wage determination, or an installation determination containing more than one rate schedule (i.e., building, heavy, highway, or other type of construction), the contracting officer shall include in the solicitation the rate schedule applicable to the particular type of construction involved.

(2) If there is more than one type of construction involved, the complete determination may be included in the solicitation. However, the contracting officer shall identify the rate schedules believed to be applicable to the particular type of construction involved.

(3) If there is doubt as to the applicability of various rate schedules to the type or types of construction involved, guidance should first be sought from the Administrator, Wage and Hour Division.

(b) *Sealed bid contracts.* (1) If it appears before bid opening that a wage determination may expire before award, or a determination actually does expire before bid opening, the contracting officer shall request a new determination. The contracting officer shall postpone the bid opening date, if necessary, to allow a reasonable time to obtain the determination, modify the solicitation to reflect the new determination, and permit bidders to amend their bids. Even if the new determination does not change the wage rates and would not warrant amended bids, the contracting officer shall modify the solicitation to include the number and date of the new determination.

(2) When bids have been opened for a sealed bid solicitation and the wage determination will expire before award, the head of the contracting activity or a designee may submit a written request for an extension of the expiration date to the Administrator, Wage and Hour Division, Department of Labor. This action shall be taken only upon a written finding that an extension is in the public interest to prevent injustice, undue hardship, or serious impairment of the conduct of Government business. The Administrator may extend the period of effectiveness of the determination. If an extension is not requested, or if an extension is requested and denied, the contracting officer shall obtain a new wage determination. If the new determination changes the wage rates, the contracting officer shall cancel the solicitation and resolicit using the new wage rates.

(c) *Negotiated contracts.* (1) If it appears that a wage determination will expire before award, or the determination actually does expire before award, the contracting officer shall request a new wage determination. If the new determination makes a change in the wage rates, the contracting officer shall furnish the wage rate information specified in the new determination to all prospective offerors—

(i) To whom a solicitation has been sent, if the closing date for receipt of proposals has not yet occurred; or

(ii) That have submitted proposals if the closing date is past.

(2) All prospective offerors to whom wage rate information has been furnished shall be given a reasonable opportunity to amend their proposals.

(3) The contracting officer need not delay opening and reviewing proposals or discussing them with the offerors while a new determination is being obtained. The contracting officer shall request offerors to extend the period for acceptance of any proposal if that period expires or may expire while the contracting officer is waiting for a new wage determination.

(d) *Receipt of new determination before expiration of original determination.* When a new wage determination has been requested and received before award, but an award is made before the expiration date of the original determination, the new determination must be treated as a superseding decision in accordance with 522.404-4. However, the new determination shall expire on the expiration date stated on the new determination and not on the expiration date of the determination that it replaces.

(e) *Withdrawal or discovery of incorrect wage determination.* If the wage determination included in the bidding document or solicitation is found to be an incorrect wage determination or is withdrawn by the Department of Labor, the Department of Labor shall notify the contracting agency. Any written notification by the Department of Labor received prior to contact award shall become effective immediately without regard to 522.404-4 of this regulation.

(f) *Contracts awarded without required wage rate.* If a contract is inadvertently awarded without the required wage determination or modification, and the required determination either was not issued or was inapplicable or has expired or been rescinded, the contracting officer with the concurrence of his legal advisor shall submit a request to the Department of Labor for an advisory opinion setting forth the wage rate as of the date of award. Upon receipt of the opinion, the contracting officer shall issue a contract modification replacing or adding the determination data, effective retroactively to the date of award with an equitable adjustment in the contract price. See 29 CFR 1.6(f).

(g) *Sealed bid solicitations without a wage determination.* When a solicitation is issued before the wage determination is obtained, notice shall be included in the solicitation that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment. Under no circumstances may bids be opened until a reasonable time after the wage determination has been furnished to all bidders.

[49 FR 10838, Mar. 22, 1984, as amended at 50 FR 10055, Mar. 13, 1985]

522.404-4 Modifications of wage determinations.

(a) The Secretary of Labor may modify a wage determination by issuing a "letter of inadvertence" to correct a clerical error in the determination, a "notice of modification" which specifies changes in the determination, or a "supersedeas decision," which is a reissuance of the entire determination with changes incorporated. All these modifications expire on the same day as the original determination. Since the need for inclusion of a modification (other than letter of inadvertence) in a solicitation is determined by the time of receipt by the contracting agency concerned, all modifications shall be time-date stamped immediately upon receipt by the agency. Letters of inadvertence are applicable retroactively to the date of award regardless of when they are issued or received by the contracting officer. The need to include a modification of a general wage determination in a solicitation is determined by the publication date of the notice in the FEDERAL REGISTER.

(b) A modification to an individual or installation determination received by the contracting officer concerned 10 calendar days or more before bid opening, or a notice of a modification to a general determination published in the FEDERAL REGISTER 10 calendar days or more before bid opening, shall be processed as follows:

(1) Sealed bid contracts.

(i) If the modification reaches the contracting officer before bid opening, the contracting officer shall issue an amendment to the solicitation and, if necessary, extend the date of bid opening.

(ii) If the modification reaches the contracting officer after bid opening, but before award, and the modification increases any included wage rates and the lowest responsible, responsive bidder agrees in writing to the increase without a change in the bid price, the contracting officer shall award the contract and incorporate the modification;

(2) *Negotiated contracts.* If the modification reaches the contracting officer before award, the contracting officer shall notify the prospective contractors and allow them sufficient time to adjust their offers accordingly.

(c) When a modification that affects wage rates in a solicitation is received by the contracting agency (or when a general determination notice is published in the FEDERAL REGISTER) less than 10 days before bid opening in the case of sealed bid contracts, the solicitation should be modified if the contracting officer determines that there is reasonable time to notify all potential offerors of the changes. If the contracting officer finds that there is not enough time to notify potential offerors, the modification may be disregarded. The contracting officer must include in the contract file a written explanation when any modification is not incorporated in the solicitation. A copy of the statement must be furnished to the Department of Labor upon request.

(d) If the contract has not been awarded within 90 calendar days after bid opening, any modifications to the wage determinations for which a notice was published in the FEDERAL REGISTER prior to award will be effective with respect to that contract unless an extension from the 90 day period has been obtained from DOL. If a situation arises where award cannot be made within 90 calendar days after bid opening, the agency labor relations advisor or legal counsel should be contacted for guidance in obtaining an extension of the 90 day period. (If an extension is necessary, the contracting officer must not incorporate modifications to the general wage determination for which a notice was published after the bid opening without obtaining legal review and concurrence.)

NOTE: If an extension is deemed necessary, the Contracting Officer shall not incorporate modifications to the general wage determination published subsequent to the bid opening without obtaining legal review and concurrence.

[49 FR 10838, Mar. 22, 1984, as amended at 50 FR 10055, Mar. 13, 1985; 51 FR 32655, Sept. 15, 1986]

522.404-5 Wage determination appeals.

The Secretary of Labor has established a Wage Appeals Board. The Board, among other things, decides appeals concerning questions of law and fact arising frcm decisions regarding wage determinations issued under the Davis-Bacon Act and related minimum wage statutes. Each contracting agency may file a petition for review of, or for intervention in, any matter that appears appropriate for the Board's action, under the procedures in 29 CFR Part 7 and pertinent agency procedures.

522.405 Administration and enforcement.

522.405-1 Policy.

(a) *General.* Contracting agencies are responsible for assuring the full and impartial enforcement of the labor standards in the administration of construction contracts. To enforce this policy, contracting agencies shall maintain a continuing effective program that shall include—

(1) Ensuring that contractors and subcontractors are informed, prior to commencement of work, of the obligations under the labor standards clauses of the contract (see GSA Form 618-A, Form Letter for Informing Contractor of Labor Standard Provisions);

(2) Adequate payroll reviews, on-site inspections, and employee interviews to determine compliance by the contractor and subcontractors and prompt initiation of corrective action when required;

(3) Prompt investigation and disposition of complaints (see GSA Form 3017, Labor Standards Interview); and

(4) Prompt submission of all reports required by this subpart.

(b) *Responsibility.* The contracting officer shall inform the contractor of the labor standards clauses of the contract and of the contractor's and any subcontractor's responsibilities under the contract. Unless it is clear that the contractor is fully aware of the requirements, the contracting officer shall issue an explanatory letter or arrange a conference with the contractor promptly after award of the contract. The contracting officer may use the GSA Form 618-A, for this purpose.

522.405-2 Wages, fringe benefits, and overtime.

(a) In computing wages paid to a laborer or mechanic, the contractor may include only the following items:

(1) Amounts paid in cash to the laborer or mechanic, or deducted from payments under the requirements of 29 CFR Part 3.

(2) Contributions, except those required by Federal, State, or local law, that the contractor makes irrevocably to a trustee or a third party under any bona fide fund, plan, or program to provide for medical or hospital care, pensions, compensation for injuries or illness resulting from occupational activity unemployment benefits, life insurance, disability and sickness insurance, accident insurance vacation and holiday pay, defraying costs of apprenticeship, or any other bona fide fringe benefit.

(3) Other contributions or anticipated costs for bona fide fringe benefits to the extent expressly approved by the Secretary of Labor.

(b)(1) The contractor may satisfy the obligation under the clause at 552.222-70, Davis-Bacon Act, by providing wages consisting of any combination of contributions or costs as specified in 522.405-2(a), if the total cost of such combination is not less than the total of the basic hourly rate and fringe benefits payments prescribed in the wage determination decision for the classification of laborer or mechanic concerned.

(2) Wages provided by the contractor and fringe benefits payments required by the wage determination may include items that are not stated as

exact cash amounts. In these cases, the interested parties shall determine the cash equivalent of the cost of those items when necessary to determine whether the wages provided by the contractor satisfy the requirements of the wage determination. If the interested parties cannot agree on the cash equivalent, the contracting officer under paragraph (d) of the clause at 552.222-70, Davis-Bacon Act, shall submit the question for final determination to the Department of Labor. The information submitted shall include—

(i) A comparison of the payments, contributions, or costs in the wage determination decision with those made or proposed as equivalents by the contractor; and

(ii) The comments and recommendations of the contracting officer.

(c) In computing required overtime payments, the contractor shall use the basic rate of pay in the wage determination, or the rate actually paid by the contractor, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contributions, costs, or payment of cash equivalents for fringe benefits. Overtime shall not be computed on a rate lower than the basic rate specified in the wage determination.

522.405-3 Additional classifications.

(a) If any laborer or mechanic is to be employed in a classification not listed in the wage determination applicable to the contract, the contractor shall submit to the contracting officer a request for authorization (GSA Form 2428), stating the proposed additional classification and minimum wage rate inlcuding any fringe benefits payments.

(b) Upon receipt, the contracting officer shall review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed under the classification requested cannot be performed by a classification contained in the applicable wage determination.

(2) The classification is utilized in the area by the construction industry.

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates in the wage determination contained in the contract.

(c) If the conditions in 522.405-3(b) (1), (2), and (3) are met and no interested party objects to the proposed classification, the contracting officer shall approve the request subject to review by the Department of Labor. The contracting officer shall submit a copy to the Department of Labor who will approve, modify or disapprove every additional classification action within 30 days of receipt or will notify the contracting officer within the 30 day period that additional time is required.

(d) If the criteria are not met or the interested parties cannot agree on the request, the contracting officer shall submit the proposal including the views of all interested parties, other available pertinent information and the contracting officer's recommendation, to the Department of Labor for final determination. (29 CFR 5.5).

(e) Upon approval under paragraph (c) or (d) above, the contracting officer shall notify the contractor and instruct that the approved rate and classification be posted in accordance with 522.405-6(e) and the approved rate be paid to all workers in the affected classification from the first day on which work was performed in the classification.

522.405-4 Apprentices and trainees.

(a) A contractor, prior to using apprentices or trainees on the contract work, is required to have on file written evidence of registration of those employees in a program accepted by the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, or a State apprenticeship and training agency approved and recognized by BAT. The contractor also is required to have on file written evidence of the ratios of apprentices to journeymen, and trainees to journeymen, with the wage rates for apprentices and trainees including fringe benefits payments, specified in the contractor's or subcontractor's registered programs. The contracting officer should examine these files to determine ratios and rates and compare them with those approved in the BAT program to determine the contractor's compliance with the clause at 552.222-72, Apprentices and Trainees.

(b) When a contractor has classified employees as apprentices or trainees without complying with the requirements in paragraph (a) above, the contracting officer shall reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

(c) Enforcement, including the investigation of complaints of violations, to ensure compliance with the requirements of the clause at 552.222-72, Apprentices and Trainees, shall primarily be the responsibility of the contracting agency awarding the contract.

522.405-5 Subcontracts.

In order to ensure that the requirements of the clause at 552.222-76, Subcontracts, have been met, the contractor is required to submit a fully executed Standard Form 1413, Statement and Acknowledgment, amended to include all clauses listed in the Subcontract clause and the Subcontractor Eligibility clause at 552.209-70 upon award of each subcontract.

522.405-6 Payrolls and statements.

(a) *Submission.* Within 7 calendar days after the regular payment date of the payroll week covered, the contractor is required to submit or cause to be submitted, for the contractor and each subcontractor, copies of weekly payrolls applicable to the contract and weekly payroll statements of compliance. The contractor may use the Department of Labor Form WH-347, Payroll (For Contractors Optional Use), or a similar form that provides the same data and identical representations.

(b) *Withholding for nonsubmission.* If the contractor fails to promptly submit copies of its or its subcontractors' payrolls, the contracting officer shall, from any payment due to the contractor, withhold approval of an amount that the contracting officer considers necessary to protect the interests of the Government and the employees of the contractor or any subcontractor. (See 29 CFR 5.5.)

(c) *Examination.* (1) The contracting officer shall examine the payrolls and statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to—

(i) The correctness of classifications and rates;

(ii) Fringe benefits payments;

(iii) Hours worked;

(iv) Deductions; and

(v) Disproportionate employment ratios of laborers, helpers, apprentices, or trainees, to journeymen.

(2) Fringe benefits payments, contributions made, or costs incurred on other than a weekly basis shall be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved and are otherwise acceptable.

(d) *Preservation.* The agency shall retain payrolls and statements for 3 years after completion of the contract and shall make them available when requested by the Department of Labor at any time during that period.

(e) *Posting wage determinations.* The contractor is required to keep a copy of the wage determination and any approved additional classifications posted at the site of the work in a prominent place where they can be easily seen by the workers. The contracting officer shall furnish to the contractor the Department of Labor Form WH-1321, Notice to Employees Working on Federal or Federally Financed Construction Projects, for posting with the wage rates. The name and address of the officer responsible for the administration of the contract shall be inserted in the poster to inform workers to whom they may submit complaints or raise questions concerning labor standards.

(f) *Statement when work is performed personally.* Prime contractors and subcontractors who personally perform work are required to submit, in lieu of weekly payrolls and statements of compliance with respect to payment of wages, a statement clearly showing (1) their contractual relationship, (2) the scope and dates of work performed, (3) that they received no wages, and (4) that no mechanics or laborers were employed in the prosecution of the work. GSA Form 618D, Statement to be Submitted When Work is Performed Personally, should be used to furnish this information.

522.405-7 Compliance checking.

(a) *Regular compliance checks.* The contracting officer administering the contract shall cause regular checks to be made to ensure compliance with the contract labor standards requirements. Compliance checking shall be made as frequently as necessary. Contracts of 6 months duration or less shall be investigated before final payment is made. Continuous and careful checking is essential to the success of the labor standards enforcement program. Compliance checking includes the following activities:

(1) Employee interviews to determine correctness of classifications and rates of pay, including fringe benefits payments.

(2) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(3) Payroll reviews to ensure that payrolls of prime contractors and subcontractors have been submitted on time and are complete and correct.

(4) Comparison of the above information with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

(b) *Special compliance checks.* Situations that may require special compliance checks include—

(1) Inconsistencies, errors, or omissions detected during regular compliance checks; or

(2) Receipt of a complaint alleging violations. When the complaint is not specific enough, the complainant shall be so advised and invited to submit additional information. The disclosure of employee statements shall be protected and governed by the provision of the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act of 1974 (5 U.S.C. 552(a)).

522.405-8 Investigations.

(a) *General.* Investigations shall be made when a special compliance check indicates either that a complaint has merit or that possible violations have occurred that are substantial in amount, willful, or not corrected. The investigation shall include all aspects of the contractors' compliance with labor standards requirements, and not be limited to a specific complaint, allegation, or possible violation disclosed during compliance checking. The investigation should be made by personnel familiar with labor laws and their application to contracts. When oral or written statements are taken from an employee during a regular or special investigation, they shall not be divulged to the individual's employer or to anyone other than authorized Government representatives working on the case, without the employee's written permission. In the absence of individual agency instructions, investigators are urged to use other guidelines provided by the investigation and enforcement instructions contained in memoranda issued by the Administrator, Wage and Hour Division, U.S. Department of Labor. Copies of those instructions may be obtained from the Administrator upon request.

(b) *Notification to the contractor.* (1) The contracting officer shall review the investigator's report and make preliminary findings regarding the contractor. Adverse findings that are not supported by other evidence shall not normally be based solely on employee statements that have not been authorized for disclosure by the employee. However, when investigation establishes a pattern of possible violations that are based on employees' statements that have not been authorized for disclosure, the pattern itself may constitute a suitable basis for a finding of noncompliance.

(2) Except in cases involving criminal violations under the Copeland (Antikickback) Act and the Contract Work Hours and Safety Standards Act, the contracting officer shall take the following actions upon completing the review:

(i) Provide written notice to the contractor concerning the preliminary findings, proposed corrective actions, and the contractor's right to request that the basis for the findings be made available and to submit written or oral rebuttal information within a reasonable period of time.

(ii) Request the contractor to make payment for restitution or liquidated damages determined by the contracting officer to be due, whether the violation is considered willful or nonwillful. If the request includes liquidated damages, it shall contain a written statement that the contractor may request relief from the assessment. Also see 552.405-13(b).

(3) If the contractor submits a rebuttal, the contracting officer shall reconsider the preliminary findings based on information brought out by the rebuttal and notify the contractor of the final findings. If no rebuttal is submitted within a reasonable time, the preliminary findings shall be considered to be final.

(4) Upon request from the contractor, the contracting officer shall make the basis for the findings available. However, under no circumstances will the contractor be permitted to examine the investigation report.

522.405-9 Requests for restitution of underpayments.

When a violation of the Davis-Bacon Act or the Contract Work Hours and Safety Standards Act appears to exist, the contracting officer shall request the contractor to make restitution to the employees and/or plans, funds, or programs for any type of benefits required by the applicable wage determinations.

522.405-10 Withholdings from contract payments.

(a) If the contractor or subcontractor fails or refuses to make restitution of all or any part of the wages due the employees, the contracting officer shall withhold from accrued payments due the contractor, an amount equal to the estimated wage underpayments, plus any estimated liquidated damages due under the Contract Work Hours and Safety Standards Act. In this regard the clause at 552.222-75, withholding, permits the contracting officer to withhold or cause to be withheld from the contractor under the current contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage (or Contract Work Hours and Safety Standards Act, as appropriate) requirements, which is held by the prime contractor, so much of the accrued payments or advances as may be considered necessary for payment of unpaid wages. The General Accounting Office encourages timely action to withhold funds for underpayments.

(b) If wage underpayments continue, or the failure or refusal to make restitution appears continuing or willful, or if the contractor fails or refuses to comply with any other contract, statutory or regulatory requirements, the contracting officer may suspend all contract payments to the contractor until the violations have ceased.

(c) If restitution has not been made prior to final payment under the contract, the contracting officer shall submit to the General Accounting Office, through the appropriate disbursing office: (1) The contractor's payment voucher or vouchers, (2) a Standard Form 1093, Schedule of Withholdings Under the Davis-Bacon Act, and/or the Contract Work Hours and Safety Standards Act, and (3) a statement of the amounts to be withheld for underpayment of wages and liquidated damages under the Contract Work Hours and Safety Standards Act. These amounts shall be disposed of in accordance with agency procedures.

522.405-11 Contract terminations.

If a contract is terminated for violation of the labor standards clauses, the contracting agency shall submit a report to the Administrator, Wage and Hour Division, Department of Labor, and the Comptroller General. The report shall include—

(a) The number of the terminated contract;

(b) The name and address of the terminated contractor or subcontractor;

(c) The name and address of the contractor or subcontractor who is to complete the work;

(d) The amount and number of the latter's contract; and

(e) A description of the work.

522.405-12 Cooperation with the Department of Labor.

(a) The contracting agency shall cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers, and all other aspects of investigations undertaken by the Department of Labor. When requested, the contracting agency shall furnish to the Secretary of Labor any available information on contractors, subcontractors, current and previous contracts, and the nature of the contract work.

(b) If a Department of Labor representative undertakes an investigation at a construction project, the contracting officer shall inquire into the scope of the investigation, and request to be notified immediately of any violations discovered under the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, or Copeland Act. Notwithstanding the Department of Labor's responsibility to investigate, the contracting officer has primary responsibility for enforcement of the Davis-Bacon Act, and Copeland Act, and the withholding of contract funds for the proper payment of laborers and mechanics under these Acts. In this regard, the contracting officer, upon a written request from an authorized representative of the Department of Labor, shall withhold the amount of accrued contract funds which are considered necessary for the payment of unpaid wages.

522.405-13 Overtime and liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) Under the Contract Work Hours and Safety Standards Act, the contractor will be liable to affected employees for underpaid wages and liable to the United States for liquidated damages in the sum of $10 per calendar day for each laborer and mechanic who was not paid overtime wages as required by the Act.

(b) The Administrator of GSA has delegated to the Heads of Central Office Services the authority necessary to act as the head of the agency for purposes of carrying out the requirements contained in 40 U.S.C. 330(c), Contract Work Hours and Safety Standards Act (CWHSS). (See Delegations of authority (ADM 5450.85) dated February 19, 1982.)

(c) When the contracting officer administratively determines (not a "final decision") that the assessed liquidated damages are due under section 104(a) of the Contract Work Hours and Safety Standards Act, the following procedures should be followed.

(1) The contracting officer shall advise the contractor of the assessment and/or withholding of liquidated damages as well as the contractor's appeals rights.

(2) The contractor may appeal to the head of the agency within 60 calendar days.

(3) The head of the agency has the authority to review the appeal and issue either:

(i) A final order affirming the determination, which the contractor may appeal to the Claims Court within 60 calendar days from issuance; or

(ii) A recommendation to the Secretary of Labor that liquidated damages be adjusted or waived if it is found that the sum assessed is incorrect or that the violations were inadvertent, notwithstanding the exercise of due care by the contractor.

(d) When the contracting officer finds that the assessed liquidated damages due under section 104(a) of the Contract Work Hours and Safety Standards Act are incorrect, or that the contractor or subcontractor inadvertently violated the provisions of the Act notwithstanding the exercise of due care, the contracting officer shall recommend to the head of the agency to—

(1) Make an adjustment in, or release the contractor or subcontractor from, the liability for the liquidated damage if the amount is $500 or less; or

(2) Make a recommendation to the Secretary of Labor, as provided in 29 CFR 5.8, for adjustment or release when the amount of damage is in excess of $500.

522.405-14 Enforcement reports.

(a) *Semiannual reports.* A semiannual report on compliance with an enforcement of the construction labor standards provisions of the Davis-

Bacon Act and Contract Work Hours and Safety Standards Act is required from the contracting agency. The reporting periods are October 1 through March 31 and April 1 through September 30. The reports shall be prepared as prescribed in the Department of Labor circular memoranda and submitted to the Department of Labor within 30 days of the end of the reporting period.

(b) Reports of violations. (1) No report is required if (i) the underpayments total less than $1000 and are nonwillful, (ii) restitution has been effected, and (iii) future compliance has been assured. However, if an investigation is expressly requested by the Department of Labor, the contracting agency shall submit a factual summary report as required in 29 CFR 5.7(a)(1).

(2) For all other underpayments, the contracting agency shall furnish to the Department of Labor, as soon as practicable, a detailed enforcement report as required in 29 CFR 5.7(a)(2).

(3) If there is substantial evidence that violations are willful and in breach of the provisions of 18 U.S.C. 1001 or other criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution and the Secretary of Labor shall be informed of the action.

522.405-15 Disposition of disputes arising out of construction contract labor standards enforcement.

(a) The areas of possible differences of opinion between contracting officers and contractors in construction contract labor standards enforcement include—

(1) Misclassification of workers;

(2) Hours of work;

(3) Wage rates and payment;

(4) Withholding practices; and

(5) The applicability of the labor standards provisions under varying circumstances.

(b) For the most part, these differences are settled administratively at the project level by the contracting agency. If necessary, such differences may be settled with assistance from the Department of Labor, without reference to the Disputes clause of the construction contract.

(c) Those disagreements involving the meaning of classifications, wage rates contained in the wage determination of the Secretary of Labor, or the applicability of contract labor provisions, which cannot be settled administratively by the contracting agency shall be referred with sufficient support data to explain both sides of the dispute to the Secretary of Labor for an opinion, in accordance with 29 CFR 5.11. No final decision on these matters shall be made by the contracting officer until the Department of Labor renders its opinion.

(d) The opinion obtained from the Department of Labor shall be made a part of the contract file and shall be applied—

(1) In the investigation of the case; and

(2) In the computation of wage underpayments.

(e) The contractor shall be furnished a copy of the opinion and advised that any appeal should be to the Wage Appeals Board of the Department of Labor as provided in 29 CFR Part 7.

522.405-16 Debarment.

The procedures for debarment in connection with the labor standards are prescribed in 29 CFR 5.12. All recommendations or referrals for debarment associated with the labor standards shall be sent to the debarring official, Assistant Administrator for Acquisition Policy, for consideration and submission to the Department of Labor. The recommendation and referrals should include the items listed in 509.406-3(a).

Subpart 522.6—Walsh-Healey Public Contracts Act

522.608 Procedures.

522.608-2 Determination of eligibility.

The contracting officer shall submit an ineligibility determination under FAR 22.608-2(f) to the Department of Labor through the contracting director.

522.608-3 Protest against eligibility.

The contracting officer shall submit any determination under FAR 22.608-3(b) to the Department of Labor or Small Business Administration through the contracting director.

522.608-4 Award pending final determination.

The certification required under FAR 22.608-4(a) must be approved by the head of the contracting activity.

522.608-6 Postaward.

Violations and complaints. Information concerning possible violations of the requirements of the Walsh-Healey Public Contracts Act can originate from complaints of injured parties, from officers or employees of the U.S. Government, or otherwise. Any such complaints coming to the attention of the contracting officer shall be considered, together with any other relevant information that is available, in coordination with the assigned legal counsel. Reports of violations shall be prepared and submitted to the Department of Labor, Employment Standards Administration, Wage and Hour Division.

Subpart 522.8—Equal Employment Opportunity

522.803 Responsibilities.

The contracting officer shall submit any questions under FAR 22.803(d) to assigned legal counsel for resolution. Questions that cannot be resolved by counsel will be referred to the head of the contracting activity for resolution.

[50 FR 28579, July 15, 1985]

522.804 Affirmative action programs.

522.804-1 Nonconstruction.

In addition to the requirements of FAR 22.804, each contractor and subcontractor who serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, shall develop a written affirmative action compliance program for each of its establishments within 120 days from the start of its first such Government contract or subcontract.

[50 FR 28579, July 15, 1985]

522.804-70 Reports and other required information.

Nonexempt contractors shall submit information reports in accordance with the Equal Opportunity clause on Standard Form 100, Equal Employment Opportunity Employer Information Report EEO-1, to the Joint Reporting Committee with an information copy to the contracting officer within 30 days after award of a contract unless a report has been submitted within the 12 months preceding the award date. Subsequent reports will be submitted annually on or before March 31 (see 41 CFR 60-1.7). If additional information is required regarding the submission of the EEO-1 report, contact the Office of Federal Contract Compliance Programs (OFCCP) regional office.

[50 FR 28579, July 15, 1985]

522.804-71 Furnishing information to contractors.

Contracting officers, when mailing contract documents to contractors who are subject to the Equal Opportunity clause, shall include appropriate information explaining the contract requirements concerning submission of Employer Information Report forms, notices to labor unions or other organizations of workers, and use of required posters (see FAR 22.805).

522.805 Procedures.

(a) When determining the contract amount for purposes of applying the threshold at FAR 22.805(a) for requesting preaward EEO reviews, the value of the contract plus any priced option shall be considered. A contract modification exercising an option is not considered new effort and does not require a preaward clearance.

(b) Requests for preaward reviews under FAR 22.805(a)(5) shall be made by the contracting officer directly to the Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor, for the region in which the contract is to be performed.

[50 FR 28577, July 15, 1985]

522.807 Exemptions.

Requests for exemption from use of the Equal Opportunity clause for specific contracts or categories of contracts shall be submitted with a complete written justification through the head of the contracting activity to the appropriate regional office of the OFCCP.

Subpart 522.10—Service Contract Act of 1965

SOURCE: 50 FR 24524, June 11, 1985, unless otherwise noted.

522.1003 Applicability.

(a) *General.* Pending the issuance of the revised Federal Acquisition Regulation (FAR) coverage of the Service Contract Act of 1965, the policies and procedures in the Federal Procurement Regulations (FPR) Subpart 1-12.9 Service Contract Act of 1965, as amended by the FPR Temporary Regulation 76, revision of labor standards for Federal service contracts, February 23, 1984, must be followed. This Subpart 522.10 contains the essential elements of the FPR Temporary Regulation 76 and includes the major changes to the Department of Labor (DOL) regulations, dated October 19, 1983.

(b) *Request for determinations and exemptions.* Request for determinations regarding the applicability of the Service Contract Act and requests for exemptions from the Act must be submitted to the Wage and Hour Administrator by the head of the contracting activity.

§ 522.1005 Clause for contracts of $2,500 or less.

The contracting officer shall insert the clause at GSAR 552.222-83, Service Contract Act of 1965-Contracts of $2,500 or less, in solicitations and contracts if the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 applies. With respect to blanket purchase agreements and basic ordering agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably expected to be placed in a 1-year period.

[51 FR 28815, Aug. 12, 1986]

§ 522.1006 Clauses for contracts over $2,500.

(a) The contracting officer shall insert the clause at GSAR 552.222-84, Service Contract Act of 1965 (as amended), in solicitations and contracts if the contract is subject to the Service Contract Act of 1965 and is (1) expected to exceed $2,500 or (2) for an indefinite dollar amount and the contracting officer expects the contract amount to exceed $2,500 during any 12-month period. For blanket purchase agreements and basic ordering agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably expected to be placed in a 1-year period.

(b) Price-adjustment clauses.

(1) Except as required by paragraph (b)(2) of this section, the contracting officer shall insert the clause at GSAR 552.222-86, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiyear and Option Contracts) or another clause authorized by FAR 16.203-4 (d) which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at GSAR 552.222-84, Service Contract Act of 1965 (as amended), and is a multiyear contract, or a contract with options to renew that is expected to exceed the small purchase limitation. The clause is optional for small purchases.

(2) The contracting officer shall insert a clause substantially the same as one of the clauses at GSAR 552.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiyear and Option Contracts) or another clause authorized by FAR 16.203-4 (d) which accomplishes the same purpose, in solicitations and fixed price contracts for building services when the contract contains the clause at GSAR 552.222-84, Service Contract Act of 1965, and is

a multiyear contract or a contract with options to renew that is expected to exceed the small purchase limitation. When it is expected that the contract will be negotiated based on certified cost and pricing data, the clause at GSAR 552.222-86 should be used. The clause is optional for small purchases.

(3) The contracting officer shall insert the clause at GSAR 552.222-85, Fair Labor Standards Act and Service Contract Act-Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed price service contract containing the clause at GSAR 552.222-84, Service Contract Act of 1965 (as amended), that exceeds the small purchase limitation and is not a multiyear contract, or is not a contract with options to renew. The clause is optional for small purchases.

(4) The clauses prescribed in this paragraph GSAR 522.1006(b) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination before: (i) Exercise of a contract option or (ii) extension of a multiyear contract into a new program year. If an economic price adjustment clause is developed under FAR 16.203-4 and included in a solicitation contract, the clauses prescribed in this section normally will not be used. If they are used, the contracting officer must ensure the clauses do not conflict or overlap.

[51 FR 28815, Aug. 12, 1986]

§ 522.1007 Notice of intention to make a service contract.

(a) The Department of Labor (DOL) has issued a Service Contract Act Directory of Occupations to use in determining job classifications when procuring services. The directory is available for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It contains occupational titles and descriptions that contracting offices must use when listing on SF 98a the classes of service employees to be used. When contracting officers are unable to find an appropriate title or description in the directory, they must develop and submit an appropriate occupational title and description for the work to DOL with the SF 98 request.

(b) Requests to expedite wage determinations or to check the status of a request may be made by the contracting officer directly to the Wage and Hour Administrator.

[51 FR 28816, Aug. 12, 1986, as amended at 53 FR 30844, Aug. 16, 1988]

§ 522.1008 Wage determinations and collective bargaining agreements.

For the purposes of this subpart, the agency labor advisor is the contracting office's assigned legal counsel.

[51 FR 28816, Aug. 12, 1986]

522.1011 Hearings.

Requests for hearings under 29 CFR 4.11, will be made by the contracting officer through the head of the contracting activity to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. All such requests shall be coordinated with the appropriate legal counsel.

Subpart 522.13—Special Disabled and Vietnam Era Veterans

522.1303 Waivers.

Requests for the waiver provided for in FAR 22.1303 will be proposed by the contracting officer and submitted through the head of the contracting activity to the Administrator for concurrence. After concurrence the waiver will be submitted to the Director of OFCCP for approval.

522.1306 Complaint procedures.

Within GSA complaints as to the administration of the Act will be forwarded by the contracting officer directly to the Veteran's Employment Service.

Subpart 522.14—Employment of the Handicapped

522.1403 Waivers.

Requests for the waiver provided for in FAR 22.1403 will be proposed by the contracting officer and submitted through the head of the contracting activity to the Administrator for concurrence. After concurrence the waiver will be submitted to the Director of OFCCP for approval.

522.1406 Complaint procedures.

Complaints as to the administration of the Act will be forwarded by the contracting officer directly to the Director, OFCCP.

PART 523—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 523.3—Hazardous Materials Identification and Material Safety Data

523.303 Contract clause.
523.370 Solicitation provision.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10848, Mar. 22, 1984, unless otherwise noted.

Subpart 523.3—Hazardous Materials Identification and Material Safety Data

523.303 Contract clause.

The contracting officer shall insert the clause at 552.223-70, Hazardous Substances, in solicitations and contracts for packaged items subject to the Federal Hazardous Substances Act and the Hazardous Materials Transportation Act.

523.370 Solicitation provision.

The contracting office shall insert the provision at 552.223-71, Hazardous Material Information, in solicitations including small purchases, which involve the shipment of hazardous materials on an f.o.b. origin basis.

PART 524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 524.1—Protection of Individual Privacy

524.103 Procedures.

Subpart 524.2—Freedom of Information Act

524.202 Policy.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10848, Mar. 22, 1984, unless otherwise noted.

Subpart 524.1—Protection of Individual Privacy

524.103 Procedures.

The GSA regulations applicable to FAR 24.103 are in 41 CFR 105-64 and the GSA Privacy Act Program (OAD P 1878.8). Refer to these regulations when contracting for the design, development, or operation of a system of records on individuals.

Subpart 524.2—Freedom of Information Act

524.202 Policy.

See 41 CFR 105-60 and the Freedom of Information Act (ADM 1035.11), procedures, for requirements related to making records available under the Freedom of Information Act covered in FAR 24.202.

PART 525—FOREIGN ACQUISITION

Subpart 525.1—Buy American Act—Supplies

525.102 Policy.
525.105 Evaluating offers.
525.105-70 Evaluating offers—Hand or measuring tools for other than the Department of Defense.
525.105-71 Procurement of hand or measuring tools for the Department of Defense.
525.105-72 Procurement of stainless steel flatware for the Department of Defense.
525.108 Excepted articles, materials, and supplies.
525.108-70 Determination of nonavailability.

Subpart 525.2—Buy American Act—Construction Materials

525.202 Policy.
525.203 Evaluation of offers.
525.204 Violations.
525.205 Solicitation provision.

Subpart 525.3—Balance of Payments Program

525.302-70 Procurements for the Agency for International Development (AID).
525.304 Excess and near-excess foreign currencies.
525.370 Exceptions.
525.371 Restricted solicitation.

Subpart 525.4—Purchases Under the Trade Agreements Act of 1979

525.401 Definitions.
525.402 Policy.
525.402-70 Application of dollar threshold.
525.402-71 Delegation of limited waiver authority.
525.407 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10848, Mar. 22, 1984, unless otherwise noted.

Subpart 525.1—Buy American Act—Supplies

525.102 Policy.

Acquisitions of supplies pursuant to FAR 25.102 and GSAR 525.105-70, 525.105-71 and 525.105-72 meet the requirements for full and open competition in FAR Subpart 6.1 if all responsible prospective contractors, as defined in FAR 9.101, are permitted to submit offers. Acquisitions of supplies without full and open competition (i.e., all otherwise responsible sources are not permitted to submit offers) shall be made under the authorities in FAR Subparts 6.2 or 6.3 and comply with the respective requirements of these FAR Subparts for Determinations and Findings or approved justifications.

[50 FR 10055, Mar. 13, 1985]

525.105 Evaluating offers.

(a) Proposed awards requiring the approval of the head of the agency, pursuant to FAR 25.105, shall be submitted to the head of the contracting activity or his/her designee together with a statement of facts containing the following information:

(1) Description of the item(s), including unit and quantity.

(2) Estimated cost.

(3) Statement as to whether duty is included in the estimated cost and, if not, the reasons for exclusion.

(4) Transportation costs for delivery to destination if the item is to be procured f.o.b. origin.

(5) Country of origin.

(6) Name and address of proposed contractor(s), if available.

(7) Brief statement as to necessity for procurement.

(8) Reasons why an award to a small business concern or labor surplus area concern would not be unreasonable as to cost or inconsistent with the public interest, when an award for more than $250,000 to a domestic concern would be made if the 12 percent factor is applied, but would not be made if the 6 percent factor is applied.

(9) Reasons for recommending rejection of an acceptable low foreign offer to protect essential national security interests, or rejection of any offer for other reasons of national interest, when the Trade Agreements Act of 1979 is not applicable.

(b) With the exception of circumstances described in (a)(8), before rejection of offered prices under paragraph (a) of this section, for reasons of the national interest not described or referred to in Executive Order 10582, as amended, the head of the contracting activity or his/her designee shall obtain advice from the Director, Federal Emergency Management Agency, and apprise the Executive Office of the President, Office of Management and Budget, of the facts in the matter.

[49 FR 10848, Mar. 22, 1984, as amended at 50 FR 10055, Mar. 13, 1985]

525.105-70 Evaluating offers—Hand or measuring tools for other than the Department of Defense.

(a) *Definition.* "Hand and measuring tools" are Groups 51 and 52, in Cataloging Handbook H2-1, Federal Supply Classification, Part I, Groups and Classes, published by the Defense Logistics Agency, Defense Logistics Services Center, Battle Creek, Michigan.

(b) *Solicitation provision.* The contracting officer shall insert the provision at GSAR 552.225-70, Buy America Act—Hand or Measuring Tools, in solicitations and contracts for the acquisition of hand or measuring tools for other than Department of Defense requirements.

(c) *GSA Appropriation Act restrictions.* The current GSA Appropriation Act places certain restrictions on the acquisition of hand or measuring tools by GSA. These restrictions require that the purchase of hand or measuring tools be from domestic sources or be made in accordance with procedures prescribed by DAR 6-104.4(b) of the Armed Services Procurement Regulation (ASPR) as such regulation existed on June 15, 1970, and further provides that a factor of 75 percent instead of 50 percent must be used for evaluating foreign source end products in accordance with 6-104.4(b) of the ASPR.

(d) *Offer evaluation procedures.* Offers for hand or measuring tools must be evaluated in accordance with the following procedures which are adaptations of 6-104.4(b) of the ASPR.

(1) Offers must be evaluated to give preference to domestic end products. Contractors offering end products manufactured in Canada must be evaluated on the same basis as contractors offering domestic end products after applicable duty is included for evaluation purposes, whether or not a duty free entry certificate is issued.

(2) Each foreign offer must be adjusted for purposes of evaluation by either (i) excluding the duty from the foreign offer and adding 75 percent of the offer (exclusive of duty) to the remainder, or (ii) by adding to the foreign offer (inclusive of duty) a factor of 6 percent of that offer, whichever results in the greater evaluated price.

(3) A 12 percent factor must be used instead of the 6 percent factor, if (i) the firm submitting the low acceptable domestic offer is a small business or a labor surplus area concern, or both, and (ii) any contract award to a domestic concern which would result from applying the 12 percent factor, but which would not result from applying the 6 percent of 75 percent factor, would not exceed $100,000. If an award for more than $100,000 would be made to a domestic concern if the 12 percent factor is applied, but would not be made if the 6 percent or 75 percent factor is applied, the matter must be submitted to the head of the contracting activity for a decision as to whether the award to the small business or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest.

(4) If the foregoing results in a tie between a foreign offer as evaluated and a domestic offer, award must be made on the domestic offer. When more than one line item is offered in response to a solicitation, the appropriate factor must be applied on an item-by-item basis, except that the factor may be applied to a specific group of items if the solicitation specifically designates that award may be made on a specific group of items.

[49 FR 10848, Mar. 22, 1984, as amended at 52 FR 278, Jan. 5, 1987]

525.105-71 Procurement of hand or measuring tools for the Department of Defense.

(a) *DOD Appropriation Act restrictions.* (1) The current DOD Appropriation Act places the following restrictions on DOD's acquisition of hand or measuring tools:

(i) Except for electric or air-motor driven hand tools, DOD is prohibited from acquiring hand or measuring tools that are not wholly produced or manufactured in the United States.

(ii) Electric or air-motor driven hand tools are of domestic origin if the cost of components produced or manufactured in the United States exceed 75 percent of the cost of all components in the end product.

(2) In accordance with 6-104.4(d)(3)(ii) of the Armed Services Procurement Regulation as it existed on June 15, 1970, GSA will apply the current DOD Appropriation Act restrictions in GSA procurements where such procurements satisfy requirements that include any DOD requirements. This determination must be made on a case-by-case basis when DOD is a user of the tools being procured and the tools are available from domestic sources. The basis for applying the DOD Appropriation Act restrictions to GSA procurements is:

(i) The current DOD Appropriation Act prohibits DOD's acquisition of foreign hand or measuring tools. This restriction also applies when DOD requisitions such items through the GSA stock program.

(ii) It is not feasible for GSA to maintain separate supply systems to satisfy the requirements of civilian and military agencies.

(iii) The current Gas Appropriation Act prescribes the use of the procedures in 6-104.4 of the ASPR, dated June 15, 1970. These procedures provide that offers may be rejected when it is considered necessary for reasons of national interest.

(3) Acquisitions of hand or measuring tools, pursuant to the current DOD Appropriation Act restrictions, meet the requirements for full and open competition in FAR Subpart 6.1 if all responsible sources offering domestic end products, as defined by the current DOD Appropriation Act restrictions, are permitted to submit offers. This does not preclude the use of small business and/or labor surplus set-asides under FAR 6.2.

(4) Acquisitions of hand or measuring tools pursuant to the DOD Appropriation Act restrictions without full and open competition (i.e., all otherwise responsible sources are not permitted to submit offers) must be made under the authorities in FAR Subpart 6.2 or 6.3 and comply with the respective requirements of these FAR subparts for determinations and findings or approved justifications.

(b) *Solicitation provision.* The contracting officer must insert the provision at GSAR 552.225-71, Notice of Procurement Restriction—Hand or Measuring Tools, in solicitations and contracts for the acquisition of hand or measuring tools when the GSA Tools Commodity Center Director makes a determination that it is in the national interest to do so in accordance with GSAR 525.105-71.

[52 FR 279, Jan. 5, 1987]

525.105-72 Procurement of stainless steel flatware for the Department of Defense.

(a) *DOD Appropriations Act restrictions.* Congressional policy, as expressed in the current DOD Appropriations Act, prohibits DOD from acquiring foreign stainless steel flatware.

(b) Since the following stock items are issued almost exclusively to DOD, only domestic source end products of these stainless steel flatware items may be procured. Also, nonstock items of stainless steel flatware purchased for DOD must be domestic source end products.

7340-00-060-6057
7340-00-205-3340
7340-00-205-3341
7340-00-241-8169
7340-00-241-8170
7340-00-241-8171
7340-00-559-8357
7340-00-688-1055
7340-00-721-6316
7340-00-721-6971

(c) *Solicitation provision.* The contracting officer shall insert the provision in GSAR 552.225-72, Offers Must Be For Domestic Source End Products, in solicitations and contracts for the acquisition of stainless steel flatware for the Department of Defense.

[49 FR 10848, Mar. 22, 1984, as amended at 52 FR 279, Jan. 5, 1987]

525.108 Excepted articles, materials, and supplies.

525.108-70 Determination of nonavailability.

(a) Requests for determinations concerning nonavailability of domestic supplies (see FAR 25.102(a)(4), 25.202(a)(3), and 25.108) must be submitted to the head of the contracting activity or a designee with an appropriate statement of facts and a proposed determination. The statement of facts must include the following information:

(1) Description of the item(s), including unit and quantity;

(2) Estimated cost, including duty, if any (show the amount of duty separately);

(3) Transportation costs for delivery to destination, if item is to be procured f.o.b. origin;

(4) Country of origin;

(5) Name and address of prospective contractor(s), if available;

(6) Brief statement as to the necessity for the procurement; and

(7) Statement of effort made to procure a similar item of domestic origin or statement that there is no domestic item which can be used as a reasonable substitute.

(b) Findings and determination of nonavailability will normally be prepared in the format shown below:

GENERAL SERVICES ADMINISTRATION

Reference No. —

FINDINGS AND DETERMINATION OF NONAVAILABILITY UNDER THE BUY AMERICAN ACT REGARDING PURCHASE OF (INSERT DESCRIPTION)

Pursuant to the provisions of the Buy American Act (41 U.S.C. 10a-d) and Executive Order 10582, December 17, 1954 (3 CFR Supp.), and by virtue of delegated authority the following findings of fact and determination are hereby made:

1. Finding (set forth a statement of facts).

2. Determination. In view of the foregoing, it is hereby determined that for the purposes of the Buy American Act (insert item description) is not mined, produced, or manufactured at the present time in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Date ——————————

Signed ——————————

(End of Findings and Determination).

(c) When it has been determined that the Buy American Act is not applicable to the purchase of the end product or to the components from which it is manufactured, the original of the determination must be made a part of the contract file. In addition, a statement substantially as set forth at GSAR 552.225-73 must be inserted in the applicable solicitation and contract.

[49 FR 10848, Mar. 22, 1984, as amended at 52 FR 279, Jan. 5, 1987]

Subpart 525.2—Buy American Act—Construction Materials

SOURCE: 53 FR 9629, Mar. 24, 1988, unless otherwise noted.

525.202 Policy.

The HCA is authorized to make determinations required by FAR 25.202(a). The HCA may not redelegate authority to make determinations under FAR 25.202(a)(3) when the cost of the materials is estimated to exceed $100,000. Authority to make other determinations may be redelegated.

525.203 Evaluation of offers.

(a) The HCA or a designee may authorize the use of a particular foreign construction material when the use of a comparable domestic construction material would unreasonably increase the cost of the contract. The cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. The cost of construction material includes all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

(b) The evaluation process described in paragraph (a) above, does not apply to excepted materials listed in FAR 25.108 or in the solicitation. (See paragraph (a) of the provision at 552.225-75). See FAR 25.201 for computing cost of components.

(c) The provision at 552.225-75, Buy American Act Notice—Construction Materials, requires offerors proposing to use foreign construction materials provide adequate information for Government evaluation under paragraph (a) above, and permits alternate offers for comparable domestic construction materials at stated prices. When a foreign construction material is not authorized under (a) above, evaluation of the offer must be based on the stated price, if any, for comparable domestic construction material. If an offer proposing to use foreign construction material does not furnish data on the cost of comparable domestic construction material, and use of the foreign construction material is not authorized, the offer of foreign material must be rejected, unless the contracting officer is able to obtain prices on comparable domestic material which verifies that domestic prices are unreasonable.

(d) The contracting officer shall add 6 percent of the cost of all foreign construction materials authorized for use in accordance with paragraph (a) above, to price(s) offered, if applicable, for evaluation purposes only.

525.204 Violations.

If a contractor fails to comply with the clause at FAR 52.225-5, Buy American Act—Construction Materials, the contracting officer shall document the failure in a report and forward the report to the debarring official for consideration for debarment action in accordance with Subpart 509.4.

525.205 Solicitation provision.

The contracting officer shall insert the provision at 552.225-75, Buy American Act Notice—Construction Materials, in solicitations for construction inside the United States. This provision supplements the Buy American Act—Construction Materials clause at FAR 52.225-5.

Subpart 525.3—Balance of Payments Program

525.302-70 Procurements for the Agency for International Development (AID).

When a contracting activity enters into contracts as the contracting agent for the Agency for International Development (AID), including contracts under the Commercial Import Program (CIP), such contracts (except those involving administrative purchases) are not governed by the policies and procedures in FAR Subpart 25.3 and Subpart 525.3 of this chapter, but shall be governed by AID policies and procedures.

525.304 Excess and near-excess foreign currencies.

When a contracting activity procures articles or services for use outside the United States for another agency it will be assumed (unless a specific notation is made on the purchase request) that use of excess or near excess foreign currencies has been considered by the requisitioning agency and that such currencies are not available.

525.370 Exceptions.

When the contracting officer has knowledge that the domestic cost of an end product or service exceeds the foreign cost by more than 50 percent of the foreign cost pursuant to the procedures in FAR 25.303, the matter shall be submitted to the head of the contracting activity or his/her designee for a determination to procure the domestic product or service. This procedure shall be followed for all Balance of Payments Program procurements over $10,000.

525.371 Restricted solicitation.

(a) Estimates of comparative delivered prices of end products or services of domestic origin versus foreign origin normally will not be made by the contracting activities. Such cost estimates will have been made by the requisitioning offices prior to the submission of purchase requests. Specific written evidence from the requisitioning office concerning such estimates is not required. Accordingly, procurements made directly for other agencies of items to be used outside the United States shall be made under the Balance of Payments Program, except for AID (including Commercial Import Program) items.

(b) Prior to procuring any item for GSA use outside the United States, cost estimates shall be made before restricting to U.S. end products or services.

Subpart 525.4—Purchases Under the Trade Agreements Act of 1979

525.401 Definitions.

"Product," means a stock number or other method of identification such as National Stock Number (NSN), a non-NSN, part number or Special Item Number (SIN) that identifies a line item in a solicitation. Where two or more line items in a solicitation have identical stock numbers or other identification, such line items shall be deemed to constitute a single "product" for purposes of determining the applicability of the Trade Agreements Act.

EFFECTIVE DATE NOTE: Section 525.401 was temporarily removed at 53 FR 28886, Aug. 1, 1988. The temporary regulation expires August 1, 1989.

§ 525.402 Policy.

(a) Pursuant to FAR 25.402(a), contracting officers shall evaluate offers of $156,000 or more for an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The $156,000 threshold must be inserted in paragraph (b) of the FAR clause at 52.225-9.

(b) Pursuant to FAR 25.402(d), acquisitions of eligible products meet the

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requirements for full and open competition in FAR Subpart 6.1 if all responsible prospective contractors, as defined in FAR 9.101, offering United States or designated country end products are permitted to submit offers.

(c) Acquisitions of eligible products without full and open competition (i.e., all otherwise responsible sources are not permitted to submit offers) shall be made under the authorities in FAR Subparts 6.2 or 6.3 and comply with the respective requirements of these FAR subparts for Determinations and Findings or approved justifications. When acquiring eligible products without full and open competition using the authorities in FAR 6.302-3(a)(2)(i) or 6.302-7, a copy of the approved justification shall be furnished to the Associate Administrator for Acquisition Policy for subsequent transmittal to the U.S. Trade Representative.

[50 FR 38005, Sept. 19, 1985, as amended at 53 FR 4170, Feb. 12, 1988]

525.402-70 Application of dollar threshold.

(a) Where two or more line items in a solicitation have identical stock numbers or other identification, constituting a single product, the dollar threshold specified by the U.S. Trade Representative is applicable to the total of all line items for the single product.

(b) When General Services Administration multiple award schedule contracts are involved, the dollar threshold specified by the U.S. Trade Representative, is applicable to the total estimated dollar value of all orders placed under contracts for eligible products under a Special Item Number during the contract period, not the dollar value of individual products on a purchase/delivery order placed against the schedule contract. Therefore, when schedules are published, they must indicate the Special Item Numbers subject to the Buy American Act, the Balance of Payments evaluation procedures, and the requirements of the Trade Agreements Act.

Effective Date Note: Section 525.402-70 was temporarily removed at 53 FR 28886, Aug. 1, 1988. The temporary regulation expires August 1, 1989.

525.402-71 Delegation of limited waiver authority.

(a) Section 302 (a)(1) of the Act restricts the purchase of eligible products to those originating in the United States or a designated country absent a waiver by the U.S. Trade Representative. The U.S. Trade Representative has authorized the Administrator of General Services to waive, under specified circumstances and on a case-by-case basis, the purchasing prohibition provided in Section 302(a)(1) of the Trade Agreements Act of 1979 (the Act).

(b) The Administrator of General Services has authorized the heads of contracting activities, as defined by GSAR 502.1, to grant such waivers in cases where:

(1) In response to a solicitation, there are no responsive sealed bids or acceptable proposals received from responsible offerors of products from the U.S. or countries designated by section 302(b)(2) of the Act, or

(2) Offerors of products from the U.S. or such designated countries do not offer a sufficient quantity of the product being sought to meet the Government's requirements as specified in the solicitation.

(c) When the head of the contracting activity grants such a waiver, a copy of the waiver will be furnished to the Associate Administrator for Acquisition Policy for subsequent transmittal to the U.S. Trade Representative.

[49 FR 10848, Mar. 22, 1984, as amended at 50 FR 10056, Mar. 13, 1985; 50 FR 36084, Sept. 5, 1985; 51 FR 24668, July 8, 1986]

525.407 Solicitation provisions and contract clauses.

The contracting officer shall insert the provision at 552.225-74, Eligible Products from Non-Designated Countries—Waiver, in all solicitations subject to the Trade Agreements Act. This clause shall be used in concert with the required clauses cited in FAR 25.407.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 527—PATENTS, DATA, AND COPYRIGHTS [RESERVED]

PART 528—BONDS AND INSURANCE

Subpart 528.1—Bonds

Sec.

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528.101-1 Policy on use.
528.101-3 Contract clause.
528.101-70 Failure to provide bid guarantee.
528.102 Performance and payment bonds for construction contracts.
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528.310 Contract clause for work on a Government installation.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10850, Mar. 22, 1984, unless otherwise noted.

Subpart 528.1—Bonds

528.101 Bid guarantee.

528.101-1 Policy on use.

(a) *Construction contracts.*

(1) Bid guarantees shall not be required for contracts awarded under section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)). Refer to FAR 19.809(b)(5) for guidance on bonding requirements applicable to contracts to be awarded under the section 8(a) program.

(2) Bid guarantees shall be required for construction contracts (except section 8(a) contracts) that do not exceed $25,000 when it is determined that a performance bond is essential to protect the Government as provided in 528.102-1.

(b) *Building service contracts.* Bid guarantees shall be required for building service contracts in excess of $25,000 when it is determined that a performance bond is essential to protect the interests of the Government as provided in FAR 28.103-2.

(c) *All other contracts.* Refer to FAR 28.101 for additional guidance on the use of bid guarantees.

528.101-3 Contract clause.

(a) The contracting officer shall insert a clause substantially the same as the clause at 552.228-70, Bid Guarantee and Bonds, in solicitations and contracts when a construction contract or a contract for dismantling, demolition, or removal of improvements is contemplated and bid guarantee requirement is included.

(b) The contracting officer shall insert a clause substantially the same as the clause at 552.228-71, Bid Guarantee, in solicitations and contracts when a building service or other service contract is contemplated and a bid guarantee requirement is to be included.

528.101-70 Failure to provide bid guarantee.

Where a request for proposals requires support by a bid guarantee and an offeror does not comply, the proposal shall not be rejected because nonresponsiveness is not a criterion for negotiated procurements. During negotiations, deficiencies in a proposal in the competitive range, such as the failure to submit a bid guarantee, may be remedied by the offeror in a revised proposal. (See FAR Subpart 15.6.)

528.102 Performance and payment bonds for construction contracts.

528.102-1 General.

(a) The performance and payment bond requirements in FAR 28.102-1 are applicable to contracts awarded under section 8(a) of the Small Business Act unless the bonding requirement has been waived by SBA under section 8(a)(2) of the Small Business Act as amended. (Public Law 99-567, October 26, 1986).

(b) Performance and/or payment bonds may be required on a case-by-case basis for construction contracts that do not exceed $25,000 if a written determination is made by the contracting officer, that such a requirement is in the best interest of the Government. Such determinations must be approved at a level above the contracting officer.

(c) Furnishing performance and payment bonds shall be required in the solicitation, as prescribed in 528.102-3.

[49 FR 10850, Mar. 22, 1984, as amended at 52 FR 6564, Mar. 4, 1987]

528.102-3 Solicitation requirements.

The contracting officer shall insert a clause substantially the same as the clause at 552.228-70, Bid Guarantee and Bonds, in solicitations and contracts when a performance and payment is included.

528.103 Performance and payment bonds for other than construction contracts.

528.103-2 Performance bonds.

(a) Performance bonds may be required on a case-by-case basis for building service contracts in excess of $25,000, if a written determination is made by the contracting officer, that it is essential to the best interest of the Government. Such determinations must be approved at a level above the contracting officer.

(b) Performance bonds shall not be required for building service contracts awarded under section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)), or contracts awarded to workshops for the blind or other severely handicapped under the Wagner O'Day Act, as amended (41 U.S.C. 46-48c).

(c) The penal amount of the performance bond generally shall be 10 to 50 percent of the contract price for the term of the contract at the time of the award. The contracting officer shall consider the circumstances and determine the amount of the performance bond on a case-by-case basis.

(d) The contracting officer shall insert a clause substantially the same as the clause at 552.228-72, Performance Bond, in solicitations and contracts when a performance bond requirement is included.

528.103-3 Payment bonds.

(a) Payment bonds may be required for other than construction contracts when the head of the contracting activity determines, in accordance with FAR 28.103-3, that such a requirement is in the best interest of the Government.

(b) The penal amount of the payment bond generally shall be 10 to 50 percent of the contract price for the term of the contract at the time of award. The contracting officer shall consider the circumstances and determine the amount of the payment bond on a case-by-case basis.

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.228-73, Performance and Payment Bonds, in solicitations and contracts when a performance and payment bond requirement is included.

528.106 Administration.

528.106-6 Furnishing information.

The head of the contracting activity or a designee shall perform the functions outlined in FAR 28.106-6.

[51 FR 23061, June 25, 1986]

528.106-70 Execution and administration of bonds.

(a) Bid guarantees, other than corporate or individual sureties, shall be returned to unsuccessful offerors as soon as practicable after the opening of bids.

(b) A bid guarantee, other than corporate or individual sureties, submitted by a successful offeror shall be retained until the offeror has executed all contractual documents as may be required and has submitted as acceptable performance bond or performance and payment bonds, if required.

(c) When a performance or payment bond or acceptable alternate is not furnished within the period specified by the terms of the contract, the contract may be terminated for default. (See FAR Subpart 49.4.)

(d) A surety is legally liable in the event the contractor fails to fulfill contractual obligations. To avoid the possibility of releasing a surety from liability for a contractor's default, it is necessary to furnish the surety with a copy of any notice sent to the contractor in addition to the default letter. When the Government terminates a contract for default, it is entitled to recover the excess costs involved in having the work completed. The surety must be advised of the default; they may elect to fulfill their obligations by obtaining another contractor to perform the balance of the contract work or they may reimburse the Government for any excess costs the Government incurs.

(e) A performance or payment guarantee, other than corporate or individual sureties, shall be returned to the contractor upon completing the obligations for which the guarantee was submitted.

Subpart 528.2—Sureties

528.200 Scope of subpart.

This subpart supplements FAR Subpart 28.2, Sureties, and sets forth additional guidance on the requirements applicable to bonds furnished.

528.202 Acceptable sureties.

528.202-1 Corporate sureties.

(a) The current edition of Treasury Department Circular 570 shall be prominently displayed in bid opening rooms, in GSA Business Service Centers, and in all places where bid forms and information are regularly available. Copies should be made available to officials having a need to know.

(b) Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company. The corporate seal of the surety company should be affixed. Failure of the surety to affix the seal may be waived as a minor informality. (See B-184120, July 2, 1975, 75-2 CPD 9.) Copies of the powers of attorney from the surety company authorizing the Attorney-in-Fact to excute bonds may be requested by the contracting officer.

(c) Where an invitation for bid requires a bid be supported by a bid guarantee and an unacceptable corporate surety is submitted in fulfillment of the requirement, the bid shall be rejected as nonresponsive. A bidder shall not be permitted to substitute an acceptable surety after bid opening. (See B-198687, May 23, 1980, 80-1 CPD 360.)

(d) A contractor submitting a performance or payment bond executed by an unacceptable corporate surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

528.202-2 Individual sureties.

(a) In addition to the requirements of FAR 28.202-2, the following criteria shall be considered when making determinations regarding the acceptability of individual sureties:

(1) If Standard Form 28, Affidavit of Individual Surety (SF 28) is not executed by each individual surety and submitted with the offer, the contracting officer must request a SF 28. The SF 28 shall be reviewed to ascertain the net worth of the proposed individual surety. (See Block 7, line g, of SF 28.) However, the contracting officer should consider all relevant information furnished by the surety on SF 28 and make an independent determination of the surety's net worth based upon the contracting officer's best judgment.

(2) The number and amount of other bonds for which the surety is committed and the status of the contracts with which the bonds were furnished must be considered. For example: The contracting officer may deduct the total amount of other bonds which the surety executed (Block 10 of SF 28) from the net worth figure entered in Block 7, line g,

to arrive at a realistic net worth. Alternatively, the contracting officer may deduct nothing or only a portion of the amount entered in Block 10 based upon the degree of completion of the contracts on which the bonds were provided.

(b) If the contracting officer is unable to make a determination of net worth from the SF 28, the individual surety shall be required to furnish additional information. Generally, supplementary information shall not be required unless the SF 28 is incomplete or improperly filled out or unless the contracting officer has reason to believe the surety's statement on the SF 28 does not reflect the true net worth.

(c) If the contracting officer determines that either surety's net worth is not equal to the penal amount of the bond, the bid of the firm utilizing the sureties shall be rejected as non-responsible. A finding of bidder nonresponsibility pursuant to FAR 9.105-2, based on unacceptability of an individual surety need not be referred to the Small Business Administration for a competency review. (See 61 Comp. Gen. 456 (1982).)

(d) Under certain circumstances, such as when there is a record indicating a continuing pattern among certain individual sureties not to disclose outstanding bond obligations, the offeror's sureties may be rejected as unacceptable. (See 61 Comp. Gen. 592 (1982).)

(e) In a sealed bid procurement an offeror submitting a bid guarantee executed by an unacceptable surety may not substitute an acceptable individual surety after bid opening. This holds even though the surety's acceptability is a matter of bidder responsibility. (See 61 Comp. Gen. 456 (1982).) When a negotiated procurement is involved, such a deficiency may be remedied by the offeror in a revised proposal.

(f) Any individual surety executing a bond furnished GSA cannot have been excluded from acting as an individual surety by the Assistant Administrator for Acquisition Policy. (See 528.270.) Any bid submitted in response to an invitation for bid which is accompanied by a bid guarantee backed by an individual surety who has been excluded shall be rejected as nonresponsive. When a negotiated procurement is involved, such a deficiency may be remedied by the offeror in a revised proposal.

(g) A contractor submitting an unacceptable individual surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

[49 FR 10850, Mar. 22, 1984, as amended at 50 FR 10056, Mar. 13, 1985]

528.202-70 Acceptability of bonds and sureties.

(a) Every bond furnished in connection with a procurement must be supported by corporate or individual sureties or by other acceptable security such as postal money orders, certified check, cashiers's check or in accordance with Treasury Department regulations, certain bonds or notes of the United States. An irrevocable letter of credit may be accepted only in connection with a bid guarantee. Upon receipt of a required bond, the contracting officer shall ascertain the acceptability of the surety.

(b) When determining the acceptability of a bond, if there is a question of validity, the contracting officer shall seek the advice of legal counsel. The contracting officer shall check the current Treasury Department circular 570 to determine acceptability.

(c) When a contracting officer has verified the acceptability of the surety on a bond, he shall so certify by placing the words "Acceptability of Bond Verified," with his signature immediately thereunder, on the bond or on a properly identified attachment. The bond shall be retained with the original of the contract. The contracting officer shall notify the contractor that the bond(s) has been accepted.

(d) Any contracting officer who becomes aware of circumstances which may serve as the basis for exclusion of an individual from acting as an individual surety on bonds submitted by offerors on GSA procurements shall refer those circumstances to the Assistant Administrator for Acquisition Policy through appropriate channels for consideration of exclusion action. (See 528.270.) However, circumstances that involve possible criminal or fraudulent activities shall first be reported to the Assistant Inspector General for Investigations in the Central Office or to the appropriate regional Inspector General for Investigations; the Office of Inspector General may conduct an investigation and when appropriate report such apparent or suspected violations to the Assistant Administrator. Referrals for consideration of exclusion action as a minimum should include:

(1) The basis for exclusion (see 528.270(b));

(2) A statement of facts;

(3) Copies of supporting documentary evidence;

(4) The individual's name and current or last known home and/or business addresses including zip codes;

(5) A statement of GSA's history with such individuals, if any; and

(6) A statement concerning any known active or potential criminal investigations or court proceedings.

[49 FR 10850, Mar. 22, 1984, as amended at 50 FR 10056, Mar. 13, 1985]

528.202-71 Assets pledged to support bonds.

(a) When bid guarantees, performance and/or payment bonds are required, the solicitation clauses at 552.228-70, 552.228-71, 552.228-72, and 552.228-73 may be expanded at the contracting officer's discretion to include the clause at 552.228-74, Pledges of Assets, requiring offerors to obtain pledges of assets from individual sureties identified in their offers, e.g., a recordable Covenant Not To Encumber or Convey Real Estate and/or commercial or government securities placed in escrow accounts in accordance with 528.203.

(b) The following format or any document substantially the same, may be attached when a surety pledges real estate on Standard Form 28, Affidavit of Individual Surety.

COVENANT NOT TO ENCUMBER OR CONVEY REAL ESTATE

I/we covenant and agree that so long as I/we shall be obligated as an individual surety on solicitation/contract No. GS—— in the amount of $—— to the United States of America whether such obligation be incurred before or after the date hereof, and until this instrument is formally released. I/we shall not make, or cause to be made, any deed of trust, mortgage, conveyance or any other instrument or agreement having the effect of a lien upon or conveyance of the real estate now owned by me/us described as follows:

(Address)

In witness whereof, I/we have hereunto affixed my/our hand(s) and seal(s) this — day of ——.

Witness:

____

____

(Seal)

____

(Seal)

I, ————————, a Notary Public in and for the (State), do hereby certify that ————————, party to a certain Covenant and Agreement bearing date the — day of ——— 19—, and hereunto annexed, personally appeared before me the said ———————— being personally well known to me as the person(s) who executed the said Covenant and Agreement, and acknowledged the same to be his/her act and deed.

Given under my hand and seal this — day of ——— 19—.

____

Notary Public, State

(c) When an offeror chooses to provide an individual surety who pledges real estate as described in 528.202-71(a), the contracting officer shall arrange for the recording of the covenant in a format as prescribed above in 528.202-71(b).

528.203 Options in lieu of sureties.

Security deposited in lieu of corporate or individual sureties on bonds shall be placed in the custody of a bonded collection officer immediately after they are received except that United States bonds or notes received in the District of Columbia shall be deposited with the Treasurer of the United States as provided in FAR 28.230-1. The contracting officer shall arrange for the return of such security, or its equivalent, to the contractor when he has fulfilled all of the obligations secured by the bond in connection with which the security was deposited.

528.270 Exclusion of individual sureties.

(a) The Assistant Administrator for Acquisition Policy may exclude an individual from acting as an individual surety on bonds submitted by offerors on GSA procurements. This exclusion shall be for the purpose of protecting the Government.

(b) An individual may be excluded for any of the following causes:

(1) Failure to fulfill his/her obligation under a bond.

(2) Willful failure to disclose other bond obligations.

(3) Misrepresentation of available assets.

(4) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined by the Assistant Administrator to warrant exclusion.

(c) Exclusion of an individual shall continue until revoked by the Assistant Administrator. An exclusion shall only be revoked upon the submission of an application, supported by documentary evidence of changed circumstances or of the elimination of the causes for which the exclusion was imposed.

(d) Prior to excluding an individual, the Assistant Administrator shall furnish the individual with a written notice stating the exclusion is being considered, setting forth the reasons for the proposed exclusion, and indicating that the individual may submit, within 30 calendar days, information in writing to explain why the exclusion should not be imposed.

(e) If the individual fails to respond to the notice of proposed exclusion within 30 calendar days of receipt of the notice, the exclusion shall be imposed. If a response is provided, the Assistant Administrator shall consider the information and issue a final decision on the matter.

(f) The Assistant Administrator shall establish and maintain a system for distributing information regarding excluded individual sureties to GSA contracting activities.

Subpart 528.3—Insurance

§ 528.301 General.

(a) Insurance requirements must be adequate, just, and reasonable, and should be predicated on potential loss or damage (not necessarily on the value of the contract). When it is determined that insurance coverage should be required, the solicitation and resultant contract must contain the appropriate provisions prescribed in FAR 28.309, 28.310, or 28.311. The determination as to the type of insurance, amount, and any related insurance requirements must be made by the contracting officer with the advice of assigned legal counsel. All premiums or costs incurred to comply with an insurance requirement must be paid by the contractor.

(b) Submission of a current certificate of insurance indicating the amount and coverage to the contracting officer will serve as certification that the required insurance has been obtained.

[52 FR 6564, Mar. 4, 1987]

528.310 Contract clause for work on a Government installation.

(a) The contracting officer shall insert the clause at 552.228-75, Workmen's Compensation Laws, in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation and the contract will require work to be performed on Government property.

(b) The contracting officer shall insert the clause at 552.228-76, Insurance, in solicitations and contracts when the clause prescribed in FAR 52.228-5 is included and the contract amount is expected to exceed the small purchase limitation.

PART 529—TAXES

Subpart 529.4—Contract Clauses

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529.401 Domestic contracts.
529.401-70 Small purchases.
529.401-71 Mutiple award schedule contracts.
529.401-72 Contracts usable by the D.C. Government.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10853, Mar. 22, 1984, unless otherwise noted.

Subpart 529.4—Contract Clauses

529.401 Domestic contracts.

529.401-70 Small purchases.

The contracting officer shall insert the clause at 552.229-70, Federal, State, and local taxes in all small purchase contracts.

529.401-71 Multiple award schedule contracts.

The contracting officer shall insert the clause 552.229-71, State and Local Taxes, in all multiple award schedule solicitations and resultant contracts (including new item introductory schedules).

529.401-72 Contracts usable by the D.C. Government.

The contracting officer shall insert the clause at 552.229-72, Federal Excise Tax—D.C. Government, in all contracts which may involve the purchase of supplies by the District of Columbia Government.

PART 530—COST ACCOUNTING STANDARDS

AUTHORITY: 40 U.S.C. 486(c).

Subpart 530.3—CAS Contract Requirements

530.304 Waiver.

(a) Within GSA the Assistant Administrator for Acquisition Policy will be the review authority for seeking waivers to the Cost Accounting Standards (CAS) clauses in FAR 30.304(b).

(b) The approving authority for nondefense contracts in FAR 30.304(c) will be the Assistant Administrator for Acquisition Policy.

[49 FR 10854, Mar. 22, 1984]

PART 531—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 40 U.S.C. 486(c).

Subpart 531.1—Applicability

531.101 Objectives.

The Administrator has designated the Assistant Administrator for Acquisition Policy as the approval authority for deviations concerning cost principles, deviations will be considered on a case-by-case basis.

[49 FR 10854, Mar. 22, 1984]

PART 532—CONTRACT FINANCING

Subpart 532.1—General

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532.111 Contract clauses.

Subpart 532.4—Advance Payments

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532.502-2 Contract Finance Office clearance.
532.502-3 Solicitation provisions.
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532.502-70 Definitions.
532.502-5 Administration of Progress Payments.
532.503-6 Suspension or reduction of payments.
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532.503-71 Eligibility for progress payments.

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532.606 Debt determination and collection.
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Subpart 532.7—Contract Funding

532.700 Scope.
532.705 Contract clauses.
532.705-1 Clauses for contracting in advance of funds.

Subpart 532.8—Assignment of Claims

532.802 Conditions.
532.802-70 Requirements and indefinite quantity contracts.
532.805 Procedures.

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532.805-70 Procedures upon receipt of notice of assignment and instrument of assignment.
532.805-71 Requirements and indefinite quantity contracts for use by more than one agency.
532.805-72 Definite quantity contracts and requirements or indefinite quantity contracts for use only by GSA.
532.806 Contract clauses.

Subpart 532.9—Prompt Payment

532.904 Payment due date.
532.908 Contract clause.

Subpart 532.70—Payments on Construction Contracts Including Progress Payments Based on Percent of Completion

532.7000 Scope of subpart.
532.7001 Definitions.
532.7002 Policy.
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532.7004 Payment monitoring and expediting.
532.7005 Certification of payment to subcontractors and suppliers.
532.7006 Processing of customary progess payments.
532.7007 Partial payments.
532.7008 Final payment.
532.7009 Consent of surety.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10854, Mar. 22, 1984, unless otherwise noted.

Subpart 532.1—General

532.111 Contract clauses.

(a) *Discounts for prompt payment.* (1) Section 32.111(c) of the Federal Acquisition Regulation provides for modification of the Discounts for Prompt Payment clause with respect to payment due dates. Accordingly, the contracting officer shall modify the first sentence of paragraph (b) of the FAR clause at 52.232-8, Discounts for Prompt Payment, to read as follows:

> In connection with any discount offered for prompt payment, time will be computed from the later of: (1) The date of completion of performance of the services or the date of acceptance of the supplies, as determined in accordance with the payment terms of this contract, (2) the date a proper invoice or voucher is received in the office specified by the Government, or (3) the date a release of claims is received by the contracting officer, if required by the payment terms of this contract.

The FAR clause is for use in contracts for supplies other than Multiple Award Schedule contracts, and in contracts for services.

(2) The clause at GSAR 552.232-8 shall be included in Multiple Award Schedule solicitations and resultant contracts, in lieu of the clause at FAR 52.232-8. See GSAR 515.608-71 for an explanation concerning this deviation.

(b) *Payment due date.* The contracting officer shall insert one of the clauses referenced below in solicitations and contracts under the conditions indicated.

(1) The basic clause at GSAR 552.232-70(a) is for use in solicitations and contracts for supplies, nonpersonal services and for the acquisition of leasehold interests in real property when the lease contemplates alterations will be performed by the lessor during the term of the lease. The Alternate I clause at GSAR 552.232-70(a) is for use in solicitations and contracts for recurring building service contracts that exceed the small purchase limitation. Paragraphs (a) and/or (b) of the basic clause may be modified as appropriate to accommodate purchases where inspection and acceptance occur at the source (f.o.b. origin shipments), contracts for delivery of meat or meat food products or perishable agriculture commodities or other special circumstances.

(2) The clause at GSAR 552.232-70(b) is for use in solicitations and contracts for construction, architect-engineer, and other professional or technical services.

(3) The clause at GSAR 552.232-70(c) is for use in solicitations and contracts for the acquisition of leasehold interests in real property.

(c) *Interest on overdue payments.* The contracting officer shall insert the basic clause at GSAR 552.232-71, Interest on Overdue Payments, in solicitations and contracts for supplies, services (except for utility service contracts that include provisions for late payment charges established by tariff or state regulatory commissions), construction, architect-engineer, and other professional or technical services or for the acquisition of leasehold interests in real property. The Alternate I clause is for use in solicitations and contracts for construction, architect-engineer and other professional or technical services.

(d) *Invoice requirements.* (1) The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.232-72 in all solicitations and contracts for supplies, services or for the acquisition of leasehold interests in real property which require the submission of invoices as a prerequisite to payment by the Government.

(2) The first six entries shown in paragraph (a) of the clause are prescribed in OMB Circular A-125. Additional items of information or substantiating documentation should be listed as appropriate. All items required to constitute a "proper invoice" must be listed in the clause, even though the requirement may also be indicated elsewhere in the solicitation/contract, because it is this clause, together with the Payment Due Date clause, that provides a basis for returning a defective or improper invoice within 15 days of receipt without incurring a late payment penalty.

(3) Anything listed in paragraph (b) of the clause is requested for the convenience of the Government, but is not a "proper invoice" requirement. The use of this paragraph is optional.

(e) *Method of payment.* The contracting officer shall insert one of the clauses at GSAR 552.232-73 in solicitations and contracts, including leases of real property, when it is anticipated that payments of $25,000 or more may be made under any of the resultant contracts.

(1) The clause at GSAR 552.232-73(a) is for use when payments will be made solely by GSA. However, this clause shall also be used if other agencies are authorized to place orders and make payments under resultant contracts, provided that individual orders placed by such agencies will be for less than $25,000.

(2) A clause, substantially the same as shown at GSAR 552.232-73(b), shall be used when payments will be made by GSA and other agencies.

(f) *Adjusting payments.* The contracting officer shall insert the clause at GSAR 552.232-78, Adjusting Payments, in all solicitations and contracts for recurring building services expected to exceed the small purchase limitation.

(g) *Final payment.* The contracting officer shall insert the clause at

[50 FR 1535, Jan. 11, 1985, as amended at 51 FR 23061, 23063, June 25, 1986; 51 FR 26251, July 22, 1986; 52 FR 47006, Dec. 11, 1987]

EFFECTIVE DATE NOTE: Section 532.111 was temporarily amended at 53 FR 7366, Mar. 8, 1988, by revising paragraphs (b) and (c). The temporary regulations expire March 7, 1989. For the convenience of the user, the temporary regulation is set forth below.

532.111 Contract clauses.

* * * * *

(b) *Adjusting payments.* The contracting officer shall insert the clause at 552.232-78, Adjusting Payments, in all solicitations and contracts for recurring building services expected to exceed the small purchase limitation.

(c) *Final payment.* The contracting officer shall insert the clause at 552.232-79, Final Payment, in all solicitations and contracts for recurring building services expected to exceed the small purchase limitation.

* * * * *

Subpart 532.4—Advance Payments

532.402 General.

The findings and determinations required under FAR 32.402(e) shall be prepared by the contracting officer in cooperation with legal counsel and the Credit and Finance Branch, Region 2. The approval of the findings and determinations, along with the authorization for advance payments FAR 32.410, shall be made by the head of the contracting activity.

532.407 Interest.

The contract finance office will inform the contracting officer of the interest rate to be charged on the unliquidated balance of advance payments.

532.409 Contracting officer action.

The contracting officer shall submit for review and approval all the decisions required by FAR 32.4 to the head of the contracting activity.

Subpart 532.5—Progress Payments Based on Costs

532.501-2 Unusual progress payments.

The head of the contracting activity shall approve or disapprove requests for "unusual" progress payments on a case-by-case basis.

532.501-70 Use of benchmarks with progress payments based on costs.

In unusual circumstances it may be desirable for progress payments based on costs to provide for the achievement of specified benchmarks prior to the receipt of progress payments, when payments prior to the achievement of such benchmarks are not in the best interest of the Government. For example, such a benchmark might be the submission and acceptance of a preproduction or pilot model.

(a) The making of progress payments based on cost under any individual contract or class of contracts may be conditioned, in unusual circumstances, upon the achievement of specified benchmarks during the performance of the contract when the head of the contracting activity determines in writing based on all relevant facts, that the use of benchmarks is in the best interest of the Government. When such a determination has been made, an appropriate provision establishing one or more such benchmarks shall be included in the solicitation and each resulting contract.

(b) Benchmarks may not be used in such a manner that their effect is to convert progress payments based on costs into progress payments based on a percentage or stage of completion.

532.502-2 Contract Finance Office clearance.

(a) *Assistance in development of financial provisions.* Appropriate financial provisions shall be developed and used in accordance with FAR Part 32 and this Part 532. The contract finance office shall, upon request, provide technical advice and assistance in the development of all financial aspects of solicitations and resultant contracts. In adddition, advice may be requested by the contracting activity as to the adequacy of proposed contracts containing standard financial provisions.

(b) *Clearances.* Solicitations and contracts involving nonstandard financial provisions shall be forwarded to the contract finance office for review during the procurement process. The review shall be made prior to issuance of the solicitation. In cases of proposed additions, deletions, or other modification regarding standard financial provisions, applicable deviation procedures shall be followed.

(c) *Action by finance office.* When a matter is referred to the contract finance office for review or clearance, that office shall immediately notify the contracting officer as to the sufficiency of the financial provisions. If inadequate or improper financial provisions are proposed, the deficiencies will be explained together with the recommended remedial action which must be taken.

(d) *Contract financing office clearance.* The contract finance office clearance required by FAR 32.502-2 shall be the responsibility of the Director of Finance or the regional finance division director.

532.502-3 Solicitation provisions.

When the notice set forth in FAR 532.502-3 (a) or (b) is included in a solicitation, the notice shall include the solicitation provision set forth in 552.232-74, Progress Payments, as an additional part thereof.

532.502-4 Contract clauses.

The contracting officer shall select the appropriate progress payment clause to be used in a particular contract after coordinating the matter with appropriate legal counsel.

532.502-70 Definitions.

As used in this subpart the following terms shall have the meanings set forth below:

(a) "Financial provisions" means provisions for payments (generally), partial payments, progress payments, advance payments, insurance provisions, or other financial terms and conditions contained in, or proposed to be included in a solicitation or a resultant contract.

(b) "Standard financial provisions" means financial provisions which have been formally prescribed by the FAR or GSAR.

(c) "Nonstandard financial provisions" means financial provisions (or proposed additions, deletions, or other modifications with respect to standard financial provisions) which have not been formally prescribed or authorized as stated in the definition of Standard Financial Provisions.

(d) "Contract finance office" means the Director of Finance or the Regional Director, Finance Division for regional contracts.

532.503-5 Administration of progress payments.

The contract finance office shall establish adequate administrative and fiscal procedures to ensure the accomplishment of the fiscal aspects of FAR 32.503-5. The contract finance office shall promptly report to the contracting officer the date and amount of each progress payment to a contractor and shall provide the contracting officer with written recommendations whenever findings are made which warrant action by the Government.

532.503-6 Suspension or reduction of payments.

Action recommended by the contracting officer under FAR 32.503-6 shall be submitted to the head of the contracting activity for approval after coordination with the appropriate legal counsel. Upon approval the contracting officer shall direct the contract finance office responsible for processing payments to suspend or reduce payments.

532.503-70 Progress payment liquidation.

Recovery at rates lower than those specified in paragraph (b) of the clause in FAR 52.232-16, may be made only with the approval of the head of the contracting activity after coordination with the contract finance office. Upon approval the contracting officer shall direct the contract finance office responsible for processing payment of the lower rate.

532.503-71 Eligibility of progress payments.

(a) Contracting officers shall determine the eligibility of contractors or prospective contractors to receive progress payments. The contracting officer shall request advice and assistance from the Credit and Finance Branch, Finance Division (Region 2), when making a determination regarding progress payments. The determination shall be approved by the head of the contracting activity. The contractor or prospective contractor, and the contract finance office shall be notified of the eligibility. Contract files shall include appropriate documentation to support the determination.

(b) To be eligible to receive a progress payment, a contractor or prospective contractor must:

(1) Have submitted a written request;

(2) Have been found responsible under the provision of FAR Subparts 9.1 and 32.5; and

(3) have an accounting system and controls adequate for the proper administration of the progress payments, as described in FAR 32.503-3.

Subpart 532.6—Contract Debts

532.601 Definitions.

(a) "Responsible official" as used in this subpart means the contracting officer. However, the contract finance office is responsible for the administration of debt collection under the Accounting Operations—Accounts Receivable and Credit and Finance Operations, and Related Activities Handbook (PFM P 4253.1).

(b) "Debt" means an amount of money or property which has been determined by a responsible official to be owed to the United States from any person, or entity except that the terms do not apply to amounts owed by another Federal agency.

(c) "Delinquent debt" means an amount that has not been paid or otherwise collected by the date specified (usually 30 days) in the contracting officer's initial written demand for payment (i.e., final decision letter).

532.606 Debt determination and collection.

532.606-70 Referral of delinquent debts.

(a) When the contracting officer determines that a debt in excess of $100 is delinquent, the contracting officer shall forward notification of the delinquent debt to the applicable finance office for collection in accordance with the Debt Collection Act of 1982, and possible forwarding to a credit reporting agency.

(b) If the contractor appeals the contracting officer's demand for payment pursuant to the Disputes clause of its contract, the contracting officer shall advise the finance office whether to suspend collection efforts pending resolution of the dispute.

[53 FR 30844, Aug. 16, 1988]

Subpart 532.7—Contract Funding

532.700 Scope.

GSA fiscal regulations are contained in the Budget Administration Handbook (PFM P 4220.1), Accounting Classification Handbook (PFM P 4240.1B), and Accounting Operations—Voucher Examination, Payment Handbook (PFM P 4252.1).

532.705 Contract clauses.

532.705-1 Clauses for contracting in advance of funds.

The contracting officer shall insert the clause at GSAR 552.232-77, Availability of Funds, in solicitations and contracts for services which are "severable" when option provisions are included, when the contract will be chargeable to funds of the new fiscal year and the contract action is to be initiated before the funds are available, or when the performance period may span fiscal years.

[50 FR 1535, Jan. 11, 1985]

Subpart 532.8—Assignment of Claims

532.802 Conditions.

532.802-70 Requirements and indefinite quantity contracts.

When more than one agency is making payments under a requirements or indefinite quantity contract, it is necessary to restrict assignments of claims to individual orders placed thereunder in order to prevent confusion and delay in making payment. Thus, assignments shall be limited to each particular purchase order amounting to $1,000 or more. (See FAR 32.806(a)(1).) This limitation is non applicable in connection with requirements and indefinite quantity contracts under the sole administrative control of GSA.

532.805 Procedures.

532.805-70 Procedures upon receipt of notice of assignment and instrument of assignment.

When complying with the procedures set forth in FAR 32.805 regarding the acknowledgement of an assignment or reassignment of claims in proper form, the contracting officer shall at the same time notify the contractor (assignor) that all future invoices or other requests for payment under the contract shall specify the name and address of the assignee and include a notation that payments due thereunder have been duly assigned.

532.805-71 Requirements and indefinite quantity contracts for use by more than one agency.

Upon receipt of a notice of assignment together with a true copy of the instrument of assignment by the GSA office that issued the purchase order under the contract, the appropriate ordering officer shall:

(a) Promptly furnish notification by TWX or other expeditious means of the pending assignment to the appropriate accounting center(s), Accounts Payable Branch indicated on the original purchase order; and

(b) Secure written assurance from assigned counsel that both the notice and the instrument of assignment are in proper form, are properly executed, and are actions that the contractor is entitled to make under the terms of the contract.

532.805-72 Definite quantity contracts and requirements or indefinite quantity contracts for use only by GSA.

(a) When definite quantity contracts involve the issuance of one or more purchase orders, the contracting officer shall process any notice and instrument of assignment thereof as prescribed in 532.805-71.

(b) When definite quantity contracts are utilized (1) to supplement and satisfy regional stores stock replenishment needs that exceed the maximum order limitations (MOL) or monthly supply potential of term contracts, or (2) to satisfy requirements that exceed the MOL of Federal Supply Schedule contracts, the contracting officer shall process any notice and instrument of assignment thereof in accordance with procedures prescribed in 532.805-71. The contracting officer shall also notify all offices that will issue order against the contract, that all moneys due or to become due under the contract have been assigned. The notification shall be furnished to the appropriate regional divisions on GSA Form 1584, Contract Summary, concurrently with the transmittal of copies of the notice and instrument of assignment to the accounting center(s), and shall include the contract number, the assignee's name and address, and the assignment date.

(c) When requirements or indefinite quantity contracts are for the sole use of GSA, the contracting officer shall process any notice and instrument of assignment thereof as prescribed in 532.805-72(b); however notification of the assignment by means of GSA Form 1584 shall be furnished to all appropriate regional finance division directors.

(d) When ordering officers receive notices and instruments of assignment of claims relative to (a), (b), or (c), above, concerning contracts or purchase orders prepared by another GSA office, the ordering officer shall return the documents to the contractor with the name and address of the contracting officer or ordering officer to whom the documents should have been sent.

532.806 Contract clauses.

The contracting officer shall insert the clause at 552.232-23, Assignment of Claims, in solicitations and requirement or indefinite quantity contracts under which more than one agency may place orders.

Subpart 532.9—Prompt Payment

532.904 Payment due date.

The time specified by the contracting officer for constructive acceptance or approval in subparagraph (a)(6)(i) of FAR basic clause 52.232-25, Prompt Payment, or subparagraph (a)(5)(i) of Alternate I shall usually be 1 day for recurring building services, 5 days for supplies and other nonpersonal services or 30 days for construction, architect-engineer and other professional or technical services, unless some other number of days is justified in the contract file.

[53 FR 7366, Mar. 8, 1988]

EFFECTIVE DATE NOTE: Section 532.904 was temporarily added at 53 FR 7366, Mar. 8, 1988. The temporary regulation expires March 7, 1989.

532.908 Contract clause.

(a) The Contracting Officer shall insert the clause at 552.232-70 in solicitations and contracts when payments may be made by GSA and other agencies. (e.g. multiple award schedule contracts).

(b) The contracting officer shall insert the clause at 552.232-71 in solicitations and contracts for the acquisition of leasehold interests in real property. Contracting officers shall use Alternate I instead of the basic clause if the lease contract will contain provisions for ordering alterations or overtime utility services. If payment may be made by electronic funds transfer, the contracting officer shall use Alternate II with the basic clause or Alternate I.

[53 FR 7366, Mar. 8, 1988]

EFFECTIVE DATE NOTE: Section 532.908 was temporarily added at 53 FR 7366, Mar. 8,

1988. The temporary regulation expires March 7, 1989.

Subpart 532.70—Payments on Construction Contracts Including Progress Payments Based on Percent of Completion

532.7000 Scope of subpart.

This subpart prescribes policies and procedures for making payments on construction contracts.

532.7001 Definitions.

(a) "Progress payments" as used in this subpart means payments over the course of construction which are made on the basis of percentage or stage of completion. This term does not include payments for partial deliveries accepted by the Government under a contract, or partial payments on contract termination claims.

(b) "Partial payment" as used in this subpart, means those payments made under a contract for completed services rendered and accepted for beneficial use by the Government, where such services are only a part of the contract requirements.

(c) "Final payment" as used in this subpart, means payment that is made for completed services which takes into account all offsets for work not satisfactorily completed under the contract and all outstanding claims the Government has against the contractor and which is made after the receipt of the contractor's release of claims against the Government.

532.7002 Policy.

(a) All payments are subject to the agency policy to pay its bills on time. The Prompt Payment Act (Public Law 97-177, May 21, 1982, 31 U.S.C. 1801), which is implemented by the Office of Management and Budget (OMB) Circular A-125, provides for the payment of interest penalties on certain late payments. Progress payments and other payments made for financing purposes before receipt of complete delivered items of property or services are exempt from the assessment of interest penalties. However construction contracts generally provide for more than one type of payment (e.g., progress payments, partial payments, and final payments), and a particular payment may be a combination of these payment types, some of which would be exempt from interest penalties (progress payments) while others would be subject to interest penalties (partial and final payments). Payment provisions prescribed in GSA construction contracts shall reflect the prompt payment requirements of the agency, as well as the differing applicability of interest penalties.

(b) The policy on retainage of funds from payments to construction contractors is outlined in OFPP Policy Letter 83-1, dated May 6, 1983. The policy letter permits full payment of the current monthly progress payment where progress under a construction contract has been determined by the contracting officer to be satifactory. Contracting officer will not routinely retain funds throughout the term of a contract, and will make decisions to retain funds on a case-by-case basis. Retainage may be used: (1) Where performance deficiences have been identified under the contract or past unsatisfactory performance by the contractor has been experienced or (2) as the contract approaches completion, to ensure that deficiencies will be corrected and that completion is timely. The level of retainage withheld, if any, shall not exceed 10 percent in the case of unsatisfactory performance, or 5 percent where the retainage is to ensure satisfactory completion. Upon completion of all contract requirements, retained amounts shall be paid promptly.

(c) Use of progress payments based on a percentage or stage of completion shall be approved by the head of the contracting activity.

532.7003 Contract clause.

(a) The contracting officer shall insert the clause at 552.232-75, Payments to Contractor, in solicitations and contracts for construction, dismantling, demolition or removal of improvements.

(b) The contracting officer shall insert the clause at 552.232-76, Certification of Payment, in solicitations and contracts for construction, repair, alteration, improvement, painting, or decorating unless the procurement will be made under small purchase procedures. The clause may be used on an optional basis in small purchases.

532.7004 Payment monitoring and expediting.

(a) Payments to contractors shall be made in a timely manner, as prescribed herein, and without unwarranted delay.

(b) The contracting officer shall develop time standards and receipt control methods to ensure that progress and other payments are tracked from initiation to payment, and that inspections for payment purposes and transmissions of payment documents to the contracting officer are made expeditiously.

532.7005 Certification of payment to subcontractors and suppliers.

When a contract includes the clause at 552.232-76, Certification of Payment, no payment shall be processed unless the contractor submits therewith executed GSA Form 2419, Certification of Payment to Subcontractors and Suppliers.

532.7006 Processing of customary progress payments.

(a) Progress payments of fixed price construction contracts will be made in accordance with the clause at FAR 52.232-5, and the policy and procedure set forth below.

(b) Where the contracting officer acts on the initiation of a payment request by the contractor, a progress payment meeting and/or progress inspection shall normally be made within one week of receipt by the Government of the payment request. When project sites to be inspected are remote from the regional office, the contracting officer, when possible, should arrange for inspection by onsite personnel for payment purposes; non-technical personnel, however, should not be depended upon for technical acceptance inspection or for the detection of defects and omissions.

(c) Where the contractor and the contracting officer disagree over the amount due, the payment shall not be delayed for settlement of the differences. Instead, the contracting officer shall make payment of the undisputed amount.

532.7007 Partial payments.

Partial payments may be appropriate when a segregable portion of the project work is accepted for beneficial use by the Government. Examples include an elevator or a floor of a building, or one building of several included in a contract.

532.7008 Final payment.

(a) The final payment voucher shall be prepared for the signature of the contracting officer. The date of signature shall be considered the final settlement date for the purpose of assessing any interest penalties for late payment.

(b) The amount of the final payment shall reflect deductions made to cover liquidated damages for late completion, liquidated damages for labor violations, amounts withheld for improper payment of labor, and the amount of unilateral change orders covering defects and omissions.

(c) The final payment shall not be processed until the contractor submits a properly executed GSA Form 1142, Release of Claims. The contracting officer should consider making payment of undisputed amounts including retainage, to avoid the holding of substantial sums of money by the Government.

532.7009 Consent of surety.

Final payment to the contractor shall not be made by the Government after notice is given by the surety of a claim unless the surety provides written consent to such payment.

PART 533—PROTESTS, DISPUTES AND APPEALS

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533.7105 Procedure following decision of the GSA Board of Contract Appeals.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10857, Mar. 22, 1984, unless otherwise noted.

533.000 Scope of part.

This part sets forth procedures for processing protests and for processing those contract disputes and appeals to be decided by the GSA Board of Contract Appeals.

[50 FR 24773, June 13, 1985

Subpart 533.1—Protests

SOURCE: 50 FR 24773, June 13, 1985, unless otherwise noted.

533.102 General.

(a) Personnel concerned with processing protests must also consult FAR Subpart 33.1.

(b) Solicitations shall instruct interested parties to deliver a copy of any protest filed with the General Accounting Office (GAO) or the GSA Board of Contract Appeals (GSBCA) to the contracting officer and the appropriate Associate General Counsel, as follows:

Federal Supply Service and Information Resources Management Service—Associate General Counsel (LP) General Services Administration Washington, DC 20405

Public Buildings Service and Federal Property Resources Service—Associate General Counsel (LR) General Services Administration Washington, DC 20405

Staff offices—Associate General Counsel (LG) General Services Administration Washington, DC 20405

(c) Except as indicated in this subpart, the Office of General Counsel (OGC) is responsible for all contacts with the GAO or GSBCA, potential contractors, attorneys, and any other persons, concerning protests of GSA contract actions filed with the Comptroller General or GSBCA.

[50 FR 24773, June 13, 1985, as amended at 52 FR 6563, Mar. 4, 1987]

533.103 Protests to the agency.

The contracting officer shall consider those protests which are filed 5-31-85 with the agency. The protestor shall be notified in writing of the contracting officer's final decision.

533.104 Protests to GAO.

(a) *General.* (1) In addition to the requirements of FAR 33.104(a)(2), the agency report shall contain the GAO protest number (GAO case file number), the solicitation or contract number, the full corporate name of the protesting organization and other firms involved, and a statement indicating whether the protest was filed before or after award. If the protest is filed after award, the report shall contain the identity of the awardee, the date of award, the contract number, the date and time of bid opening (including a statement when the date of bid opening was extended by subsequent amendments), the total number of bidders, a complete chronological statement of all relevant events and administrative actions taken (including reasons and authority for the actions taken), and any other relevant documents believed helpful in determining the validity of the protest. (This evidence should be referenced and identifed within the text of the position statement, alphabetically or numerically; e.g., Tab A, Exhibit 1, etc.)

(2) GAO protests must be handled on a priority basis. The appropriate Assistant General Counsel shall prepare a report for signature of the General Counsel responding to GAO protests. These reports are to be based upon a statement of fact and position prepared by the responsible contracting officer and approved by the contracting director. When requested by

the appropriate Assistant General Counsel, the Regional Counsel shall prepare a statement of legal position analyzing the merits of a protest concerning a regional procurement.

(3) The following procedures shall be followed in handling protests:

(i) When a protest is received by the agency, the Assistant General Counsel (AGC) shall telephonically notify the contracting officer through the appropriate Central Office contracting activity or Regional Counsel. If the contracting activity or Regional Counsel receives a copy of a protest before being notified thereof by the Assistant General Counsel, they shall immediately notify the appropriate Assistant General Counsel.

(ii) After receiving the formal protest, which has been filed with GAO, the AGC shall formally request a statement of fact and position from the contracting officer through the appropriate Central Office contracting activity or Regional Counsel. The contracting officer shall immediately notify the affected bidders or offerors that a protest has been received.

(iii) The contracting officer shall notify assigned counsel and begin preparing a documented statement of fact and position immediately upon receiving a protest of notice thereof.

(iv) When completed, the statement of fact and position must be concurred in by the contracting director; and on regional procurements, by the Office of Regional Counsel. In appropriate cases, the Assistant General Counsel may request the Regional Counsel to prepare a legal position analyzing the merits of a protest against a regional procurement. In such cases, the contracting officer's statement of fact and position should be included as a referenced attachment thereto.

(v) The Regional Counsel's legal position, when requested, and the contracting officer's statement of fact and position, must be transmitted to the appropriate Assistant General Counsel, in triplicate. If other interested parties are involved, additional copies may be requested. The statement is due in the Office of the Assistant General Counsel no later than 10 workdays after the date on which the contracting officer originally received the protest. This time may be reduced if GAO invokes the express option. If a contracting officer is unable to prepare a statement of fact and position within 10 workdays, the appropriate Assistant General Counsel shall be notified promptly, by telephone, of the reasons for the delay and of the additional time needed. Additional time may be granted if the specific circumstances of the protest require a longer time. A request for an extension is proper only if the facts or legal issues affecting the resolution of a protest are so complicated that an adequate report cannot be prepared on time; the need to coordinate the report with other agencies, or with offices in distant locations, makes it impossible to prepare the report on time; or other compelling circumstances prevent preparing the report on time. Upon request of the Assistant General Counsel, the contracting officer shall confirm any oral request for extensions in writing. The contracting director shall concur in the request and send a copy to the HCA. A request for an extension, which will delay submission of the agency's report to GAO beyond 25 workdays from the date GSA originally received the protest, may be granted only by the GAO. The Assistant General Counsel will notify the Central Office contracting activity or Regional Counsel of the GAO's decision.

(vi) After submitting the statement to the Assistant General Counsel, the contracting officer or Regional Counsel shall advise the Assistant General Counsel of all later developments that may affect the case.

(vii) All documents transmitted under these procedures must be sent by the fastest means possible.

(viii) In addition to the requirements of FAR 33.104(a)(5)(ii), a copy of any comments is sent to the Assistant General Counsel.

(4) The Office of General Counsel (OGC) shall furnish the GAO with the name, title, and telephone number of one or more officials whom the GAO may contact regarding protests. The OGC is responsible for promptly advising the GAO of any change in the designated officials.

(5) The format for notification required by FAR 33.104(a)(3) is as follows:

Name
Address

A protest concerning Solicitation No. ——— has been filed with the General Accounting Office (GAO).

The protest was filed by (*Insert the name and address of the protester, and the name of the person signing the protest.*) on (*Date*).

Copies of the protest may be obtained from this office.

You may submit your views and relevant information regarding the protest directly to the General Accounting Office within 7 calendar days of receiving this notice. A copy of any submission to the GAO should be provided to this office.

____

Contracting Officer's signature.

(b) *Protests before award.* Under FAR 33.104(b), the HCA may determine in writing that urgent and compelling circumstances significantly affecting the interests of the United States do not permit waiting for the decision of GAO and award is likely to occur within 30 calendar days. The written determinations and findings (D&F), in the format shown at GSAR 501.704-70(e)(1), should be prepared by the contracting officer for the signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate Assistant General Counsel. After the D&F is approved, it must be returned to the appropriate Assistant General Counsel who notifies GAO of the agency's findings and intended action before the award is made.

(c) *Protests after award.* The procedures in paragraph (a) apply to the handling of protests after award. If the protest is received within 10 calendar days after an award, contract performance must be suspended under FAR 33.104(c) unless the HCA determines in writing that contract performance is in the best interests of the United States or that urgent and compelling circumstances that significantly affect the interests of the United States do not permit waiting for the GAO's decision. The written determinations and findings (D&F), in the format shown at GSAR 501.704-70(e)(2), should be prepared by the contracting officer for signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate Assistant General Counsel. After the D&F is approved, it must be returned to the Assistant General Counsel who notifies GAO of the agency's findings and intended action before contract performance is authorized.

(d) *Notice to GAO.* The head of the contracting activity responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General through the OGC within 60 calendar days of receipt of the GAO's recommendation if the agency has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation will not be followed.

[50 FR 24773, June 13, 1985, as amended at 51 FR 5333, Feb. 13, 1986]

533.105 Protests to GSBCA.

(a) *Notification procedure.* After receiving of a protest, the contracting officer shall notify the following:

(1) All firms solicited, or those who have submitted sealed bids or offers if the protest is filed after the closing date of the solicitation, and the appropriate delegating official in the Information Resources Management Service. When giving such notification, the contracting officer should follow these procedures:

(i) Avoid interpreting or characterizing the nature of the protest.

(ii) Use appropriate means to ensure delivery to all the firms by the workday after the date of filing with the GSBCA.

(iii) Use the following format:

Name
Address

A protest concerning Solicitation No. ——— has been filed with the General Services Administration Board of Contract Appeals (GSBCA).

The protest was filed by (*Insert the name and address of the protester, and the name of the person signing the protest.*) on (*Date*).

The protest has been purportedly filed pursuant to Section 2713 of the Competition in Contracting Act, Pub. L. 98-369.

Copies of the protest may be obtained from the Office of the Clerk of the GSBCA

18th & F Streets NW., Washington, DC 20405, or from the contracting officer.

Contracting Officer's signature.

(2) The agency on whose behalf GSA is making the procurement, if any. A copy of the protest complaint, including all attachments, must be forwarded to the agency by appropriate means to ensure next day delivery.

(3) Assigned counsel (e.g., LG, LR, or LP). If the protester failed to provide the appropriate Associate General Counsel a copy of the protest as required by the solicitation, a copy of the protest complaint, including all attachments, must be forwarded to the appropriate Associate General Counsel by appropriate means to ensure next day delivery.

(4) The Board, through assigned counsel, within 5 workdays after the date of filing with the GSBCA, that the notices described in (a)(1) and (2) have been given. Written confirmation of notice and a listing of all persons and agencies receiving notice shall be provided.

(b) *Protest file.* To ensure timely submission, the contracting officer should begin assembly of the protest file by the second workday after receiving the protest. The protest file must be forwarded to assigned counsel by overnight delivery not later than the 8th workday after the protest is filed with the GSBCA. Assigned counsel will distribute the copies to the GSBCA, the protester, and retain one copy for itself. If additional copies are needed, assigned counsel will advise the contracting officer. The following rules govern the assembly of protest files:

(1) *Format.* Protest file exhibits are true, legible, and complete copies. They must be arranged in chronological order within each submission, earliest documents first, bound on the left margin except where size or shape makes such binding impracticable, numbered, tabbed, and indexed. The numbering shall be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. The index should include the date and a brief description of each exhibit and indicate which exhibits, if any, have been filed with the Board in camera (see (b)(3) below) or otherwise not served on every other party.

(2) *Contents.* In addition to the items required by FAR 33.105(b), the contents should include those items required by GSBCA Rule 4(a), when appropriate. (See 48 CFR 6101.4(a).)

(3) *Confidential, privileged, or proprietary information.* the protest file may require the inclusion of documents and information from other vendors which are confidential, proprietary, or privileged. When such information is required to be included in the protest file, it is to be placed only in the copies going to the Board and to assigned counsel. Copies going to other interested parties will only identify the information in the index. However, the index must not reveal the number and identity of the offerors whose proposals are included in the copies of the protest file going to assigned counsel and the GSBCA, and should include identifying statement, e.g. "proposals being considered for award."

(c) *Protest conference.* Within 6 working days of filing a protest, a conference may be convened by the Board to establish further proceedings for the protest. Although the protest file and answer will most likely not have been filed, the Government must be prepared to discuss the issues in the protest, whether a record submission or hearing is desired, and other matters raised by the Board or any other interested party. The Government must also be prepared, if required, to object to the scope of discovery in any protest action.

(d) *Procedure following decision of the GSA Board of Contract Appeals.* (1) Upon a Board decision (oral or written) to suspend procurement authority pending a decision on the merits of a protest, the Contracting Officer, in conjunction with the appropriate Assistant General Counsel, shall comply with the suspension decision.

(2) If the Board suspends performance of a contract for automatic data processing goods and services, the

Contracting Officer shall take immediate action to comply with the suspension decision (40 U.S.C. 759(h)(3)(B)). Such suspension will be effective as directed by the Board.

(3) If the Board revokes, suspends, or revises procurement authority after the award of a contract for ADP resources, the contracting officer shall consider the contract valid as to all goods or services delivered and accepted before the Board's decision (40 U.S.C. 759(h)(6)(B)).

[50 FR 24773, June 13, 1985, as amended at 51 FR 5334, Feb. 13, 1986; 52 FR 6563, Mar. 4, 1987]

533.106 Solicitation provision.

The contracting officer shall insert the provision at GSAR 552.233-2, Service of Protest (May 1985) (Deviation FAR 52.233-2), in all solicitations for other than small purchases.

Subpart 533.2—Disputes and Appeals

533.214 Contract clause.

The contracting officer shall insert the clause at GSAR 552.233-70, Disputes (Utility Contract), in solicitations and contracts for utility services. This clause supplements the Disputes clause at FAR 52.233-1.

[50 FR 24775, June 13, 1985]

Subpart 533.70—Rules of the GSA Board of Contract Appeals

533.7001 Rules of the GSA Board of Contract Appeals.

The Rules of the GSA Board of Contract Appeals (GSA Order BCA 2806.1), which were issued November 30, 1984, by the Chief Judge and Chairman of the Board, appear in their entirety in the Code of Federal Regulations, Title 48, Chapter 61.

[50 FR 24775, June 13, 1985]

Subpart 533.71—Processing Contract Appeals

533.7101 Notice of appeal.

(a) Notices of appeal are to be addressed to the GSA Board of Contract Appeals along with a copy to the contracting officer. Final decisions must be appealed within 90 calendar days from the date the decision of the contracting officer is received. Any request for an extension of the 90-day appeal period will be denied.

(b) If the notice of appeal was mailed or otherwise submitted to the contracting officer in an untimely manner, a separate letter, signed by the contracting director, shall be sent to the Assistant General Counsel, Claims and Litigation Division (LC), requesting that a motion for dismissal of the appeal be submitted to the GSA Board of Contract Appeals (the Board). The letter shall state the name of the appellant, contract number, and date of the contracting officer's final decision, and shall be accompanied by (1) the certified mail receipt showing the date on which the appellant received the contracting officer's final decision, and (2) the envelope which contained the notice of appeal or other evidence of late submission of the notice of appeal.

[50 FR 24775, June 13, 1985]

533.7102 Contents of notices of appeal.

A notice of appeal must be in writing and should indicate that an appeal is thereby intended, should indentify the decision and the date thereof from which the appeal is taken, the GSA office cognizant of the dispute, and the number of the contract in question. The appeal should describe the nature of the dispute and the relief sought, the contract provisions involved, and any other additional information or comments relating to the dispute which are considered to be important. The notice of appeal shall be signed personally by the appellant (the prime contractor making the appeal) or by an officer of the appellant corporation, or member of the appellant firm, or by the contractor's duly authorized representative or attorney.

[50 FR 24775, June 13, 1985]

533.7103 Appeal files.

(a) Appeal files must be prepared in accordance with this section and forwarded, after concurrence by assigned counsel, to LC within 20 calendar days after receipt of the notice of appeal or advice that an appeal has been filed unless LC advises that the Board requires a shorter period under its small claims procedures. In the event the time for submission of the appeal file can not be met, the contracting officer shall submit in writing a full explanation and a request for additional time to the Assistant General Counsel, Claims and Litigation Division (LC), before expiration of the designated time.

(b) Upon receipt of the notice of appeal, the contracting activity shall establish a record to ensure the timely preparation and submission of appeal cases. The record shall show, as a minimum, the name of the appellant, the date of the contracting officer's final decision, the date the appeal was filed, contract number, docket number, and name of the contracting officer.

[49 FR 10857, Mar. 22, 1984, as amended at 50 FR 24775, June 13, 1985]

533.7103-1 Preparation of the appeal file.

(a) *General.* Appeal files must be prepared in quadruplicate. Each file is identified by the name of the appellant, contract number, and docket number. All copies of the appeal file must be identical both as to content and position of items. If more than one appeal is filed under the same contract, upon request to, and waiver by, the Board, the appeal file for the second and subsequent appeals need not duplicate the document included in the first appeal file, but shall make reference to the appeal file which contained such documents, including the docket and item numbers. However, if changes to such documents occur subsequent to preparation of the original file, these changes must be included, appropriately identified, in the later appeal file. Such files must also include any documents pertinent to the later appeal but not previously furnished.

(b) *Content of appeal file.* (1) Each appeal file must be assembled by using a two-piece red pressboard binder 11 by 8½ inches punched with a 3-inch capacity fastener (NSN 7510-00-582-4201). A gummed label (NSN 7510-00-264-5460) shall be used on top of the file to identify the case by contractor, contract number, and docket number.

(2) Individual appeal files must not be more than 1 inch thick. If the file will be more than 1 inch thick, two or more consecutive binders shall be used and identified with the appropriate exhibit numbers contained in each.

(3) Each document to be included in the appeal file (i.e., letter, telegram, memo, report, invoice, etc.) shall be legible, complete, included as a separate exhibit in the file, and listed in the "Index of Exhibits" by exhibit number and brief description. If a document cannot be legibly reproduced, the unaltered document shall be submitted with an attached accurate typewritten transcription thereof. Assigned counsel will assist the contracting officer in determining which documents are relevant to the issue in the appeal or not privileged for inclusion in the appeal file.

(4) Each appeal file shall contain division sheets separating the different documents listed in the "Index of Exhibits." Division sheets shall be tabbed and numbered consecutively commencing with number one, in whole Arabic numbers (no letters, decimals, or fractions) and continuously from each file to the next so that the complete appeal file will consist of one set of consecutively numbered appeal file exhibits.

(c) *Arrangement of documents.* (1) The first (top) document in the appeal file shall be the "Index of Exhibits." The index shall list, opposite each exhibit number, the date and a brief description of the document and shall indicate which exhibits, if any, have been filed with the Board but not served on the other party because of their length or bulk. The exhibits shall be arranged in chronological order, earliest document first (as exhibit 1), and be separated by tabs for identification. For example:

	Exhibit	Date
Copy of basic contract, including referenced terms and conditions and any amendments	1	5/20/84
Notice of award	2	5/20/84
Notice to proceed and facsimile of Post Office receipt	3	6/5/84

	Exhibit	Date
Contractor's request for final decision or other documents of claim in response to which the decision was issued	4	8/5/84
Contracting officer's final decision letter applicable to the dispute and facsimile of Post Office receipt	5	8/25/84
Notice of Appeal with attachment, if any	6	9/10/84
Board of Contract Appeals acknowledgement of contractor's Notice of Appeal	7	9/15/84

(2) In addition to the exhibits listed in (c)(1) above, other pertinent exhibits, such as the following, should be included and exhibited as applicable, in chronological order:

(i) Copy of the repurchase contract, including referenced terms and conditions.

(ii) Copies of specifications/drawings applicable to the dispute.

(iii) Copy of the abstract of offers and list of all offerors solicited for the repurchase contract.

(iv) Copy of letter assessment, including worksheet showing calculation of excess costs and/or other damages including administrative costs.

(v) Copies of defaulted purchase/delivery orders.

(vi) Copies of purchase/delivery orders issued under the repurchase contract.

(vii) Proof of payment and a detailed disbursement listing, annotated and certified, if applicable.

NOTE: The information and documents needed shall be obtained from the appropriate GSA accounting center. The finance information will include a detailed disbursement listing, annotated with the check number and date, and the amount applicable to the repurchase order if different than the check amount. The disbursement listing will be certified by an appropriate finance division official whose title and date of signature will also be shown.

(viii) Evidence of certification of the claim or claims, as applicable.

(ix) All other correspondence between the Government and the contractor relevant to the appeal.

(x) All documents and other physical evidence on which the contracting officer relied in making a decision.

[49 FR 10857, Mar. 22, 1984, as amended at 49 FR 34019, Aug. 28, 1984; 50 FR 24776, June 13, 1985]

533.7103-2 Transmittal of the appeal file.

(a) The original and two copies of the appeal file shall be forwarded to LC by a transmittal letter from the contracting director. The appeal file shall be accompanied by the contracting officer's detailed statement of facts in a memorandum of position as a separate document which must be concurred in by assigned counsel who shall also prepare and attach a statement of legal position. In addition, a list of recommended witnesses and the Government's estimate (when appropriate) of the amount of any claim in the event of an adverse decision must be prepared. A point of contact must be given to LC; name of individual, position, title, and telephone number.

(b) The contracting officer shall retain one copy of the appeal file.

(c) After reviewing the appeal file for adequacy, the trial attorney in LC will transmit the appeal file to the Board and serve a copy of the appeal file upon appellant.

[49 FR 10857, Mar. 22, 1984, as amended at 50 FR 24776, June 13, 1985]

533.7104 The contracting officer's memorandum of position.

The memorandum of position is a chronological summary of the actions leading to the dispute and a rationale of the contracting officer's actions for the information of the trial attorney. The memorandum of position is submitted to LC simultaneously with the appeal file, but as a separate document; i.e., it will not be included as part of the appeal file or included in the index. Although no particular form is prescribed, the statement must identify the contract, state the nature of the contractor's claim, cite pertinent portions of the contract, state the contracting officer's decision with citations to pertinent contract provisions and a supporting explanation, and set out any new facts which may have developed since the decision was made. The contracting officer shall sign the memorandum of position.

[50 FR 24776, June 13, 1985]

533.7105 Procedure following decision of the GSA Board of Contract Appeals.

(a) Decisions of the Board will be promptly implemented. However, it must be recognized that the contractor may decide to appeal a Board decision in the United States Court of Appeals for the Federal Circuit, or the United States Claims Court, as appropriate. It is also possible for either party to file a motion for reconsideration by the Board within 30 calendar days from the date of the receipt of a copy of the Board decision. If further appeal of decision or a motion for reconsideration of a decision is contemplated, the implementation of the decision may be postponed; if the issue is over quantum, however, consideration should be made to making payment of the undisputed amount to minimize interest to be paid the contractor.

(b) The contracting officer need not take any further action (other than administrative) if the Board affirms the contracting officer's original decision, provided a recovery of costs is not due from the contractor. Where a recovery is due, collection shall be initiated by the contracting officer either by (1) a contract amendment adjusting the contract price or (2) a written demand for immediate payment, as appropriate. (In excess cost cases, the Financial Management Division, Office of Finance (BCF), or regional counterpart, as appropriate, will normally pursue the necessary collection.) Any written demand shall instruct the contractor to make payment to the General Services Administration and address it to the appropriate GSA accounting center. A copy of any written demand shall be provided to the appropriate GSA accounting center for information and followup.

(c) In appeals brought under the disputes clauses of the contract, when the Board does not uphold the contracting officer's original decision and the Board's decision provides for payment in favor of the contractor, the contracting officer shall prepare a supplemental agreement with concurrence of assigned counsel. The supplemental agreement will ensure against further litigation of the same dispute. The contracting officer shall forward the recommendation for payment to the appropriate accounting center with the original of the supplemental agreement and a copy of the Board's decision.

(d) In appeals brought under the Contract Disputes Act of 1978, when the Board does not uphold the contracting officer's original decision and the Board's decision awards the contractor an amount of money, and LC informs the contracting officer that the Government will not move for reconsideration of the Board's decision or appeal it to the United States Court of Appeals for the Federal Circuit, the contracting officer must complete the Certificate of Finality attached to the copy of the Board's decision and return it to the Board. The Board will forward the Certificate of Finality, completed by both parties, and a certified copy of its decision to the United States General Accounting Office to be certified for payment to the contractor.

[49 FR 10857, Mar. 22, 1984, as amended at 50 FR 24776, June 13, 1985]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 534—MAJOR SYSTEM ACQUISITION

Sec.
534.002 Policy.
534.002-70 Directives.
543.002-71 Definitions.

AUTHORITY: 40 U.S.C. 486(c).

534.002 Policy.

[50 FR 10056, Mar. 13, 1985]

534.002-70 Directives.

The policies and procedures applicable to major systems acquisition are contained in GSA orders and the Federal Information Resources Management Regulation (FIRMR). Personnel concerned with acquiring major systems should be familiar with the following:

[53 FR 30844, Aug. 16, 1988]

534.002-71 Definitions.

"Major system" means a combination of elements that will function together to produce the capabilities required to fulfill a mission need, which elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property. (See also 41 U.S.C. 403.) Major system acquisitions are those that are:

(a) Directed at and critical to fulfilling an agency mission;

(b) Estimated to entail the allocation of $25 million or more life cycle cost in current year dollars; or

(c) Determined by the Administrator to warrant special management attention or to be of critical importance to the agency or technologically advanced.

[50 FR 10056, Mar. 13, 1985]

PART 535—RESEARCH AND DEVELOPMENT CONTRACTING—[RESERVED]

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 536.1—General

Sec.
536.101 Applicability.
536.102 Definitions.

Subpart 536.2—Special Aspects of Contracting for Construction

536.201 Evaluation of contractor performance.
536.202 Specifications.
536.202-70 Excepted materials used in construction.
536.203 Government estimate of construction cost.
536.204 Disclosure of the magnitude of construction projects.
536.206 Liquidated damages.

Subpart 536.3—Special Aspects of Sealed Bidding in Construction Contracting

536.302-70—Charges and deposits for bidding documents.
536.303 Invitations for bids.
536.303-70 Bids that include alternates.
536.303-71 Bids that include options.
536.303-72 Bids that include alternates and options.
536.370 Exercise of options.

Subpart 536.5—Contract Clauses

536.570 Supplemental provisions and clauses.
536.570-1 Definitions.
536.570-2 Authorities and limitations.
536.570-3 Specialist.
536.570-4 Basis of award—construction contract.
536.570-5 Working hours.
536.570-6 Use of premises.
536.570-7 Measurements.
536.570-8 Specifications and drawings.
536.570-9 Shop drawings, coordination drawings, and schedules.
536.570-10 Samples.
536.570-11 Heat.
536.570-12 Use of equipment by the Government.
536.570-13 Subcontracts.

Sec.
536.570-14 Furnishing information and records.
536.570-15 Government rights (unlimited).
536.570-16 Drawings and other data to become property of Government.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10860, Mar. 22, 1984, unless otherwise noted.

Subpart 536.1—General

536.101 Applicability.

Other requirements of this regulation are generally applicable to construction and architect-engineer contracts. However, if a requirement in this part is inconsistent with a requirement in another part of this regulation, this part takes precedence.

536.102 Definitions.

(a) "Construction activity" means the organizational level of the agency that has authority and responsibility for the architectural, engineering, and other technical or administrative aspects of design and construction.

(b) "Statutory cost limitations" as used in this part, refers to the cost limits that may be included in the agency's statutory authorization or annual appropriations act (by law).

Subpart 536.2—Special Aspects of Contracting for Construction

536.201 Evaluation of contractor performance.

(a) The construction activity shall prepare a performance report for each construction contract of $25,000 or more, and each construction contract where any element of performance was unsatisfactory or outstanding.

(b) Each regional construction activity shall establish procedures for maintaining alphabetically the evaluation reports and for ensuring that fully qualified personnel possessing the knowledge of the contractor's performance will prepare and review the evaluation reports.

(c) The contracting officer shall include a copy of the report in the regional evaluation report file and the contract file. The regional evaluation report file should include a cross reference for all names under which a contractor does business with GSA. The evaluation report files are to be used when making preaward determinations of contractor responsibility.

[49 FR 10860, Mar. 22, 1984, as amended at 53 FR 30844, Aug. 16, 1988]

536.202 Specifications.

Pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, the Environmental Protection Agency has promulgated rules in 40 CFR Part 249, regarding the use of certain waste by products as generally acceptable substitutes for energy-intensive raw materials. When cement or concrete is being acquired, specifications should allow the use of cement or concrete that contains fly ash as an alternate material. However, specifications should not be revised to allow the use of fly ash if it is found that performance requirements for the cement or concrete would not be met or that the use of fly ash would be unsatisfactory for technical reasons.

536.202-70 Excepted materials used in construction.

The list of excepted materials appearing at FAR 25.108 shall be included in the specifications.

536.203 Government estimate of construction cost.

(a) A detailed independent Government estimate that includes each item specified in the solicitation shall be prepared for contracts for new construction, repairs and alterations, professional services, and for any modification expected to cost $25,000 or more. When the expected cost is less than $25,000, the contracting officer, at his or her discretion, may require the preparation of an estimate. Except as provided in paragraphs (c) and (d) of this section access to or disclosure of the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate.

(b) A copy of the independent Government estimate shall be sealed in an envelope and submitted to the contracting officer before the date and time for bid opening or the date for receipt of proposals. (See paragraphs c and d.)

(c) If the procurement is by sealed bidding, the sealed copy of the detailed Government estimate shall be stored with the bids received until bid opening. Before releasing an amendment to a solicitation that may affect the price, a revised sealed Government estimate shall be stored with the bids until bid opening. After the bids are read and recorded, the sealed Government estimate shall be opened and retained with the Standard Form 1419, Abstract of Offers—Construction. However, the Government's estimate shall not be disclosed until after award. Immediately after award the Government estimate shall be recorded on the SF 1419 as the Independent Government Estimate.

(d) If the procurement is by negotiation, the sealed copy of the detailed Government estimate shall be stored with the proposals until the closing time for receipt of proposals. Cost figures in the Government estimate may be disclosed during negotiation, but only to the extent considered necessary for arriving at a fair and reasonable price, provided that the overall amount of the Government estimate is not disclosed before award. Before the release of a modification to the solicitation which may affect price, a revised Government estimate shall be prepared, sealed, and sorted, with the proposals until closing time for proposals. After award, the independent Government estimated price may be revealed, upon request, to those firms or individuals who submitted proposals.

(e) The detailed Government estimate shall be used to evaluate offers, as a guide in conducting contract negotiations or negotiations of contract modifications, and as a tool for determining the reasonableness of prices.

[49 FR 10860, Mar. 22, 1984, as amended at 50 FR 36084, Sept. 5, 1985]

536.204 Disclosure of the magnitude of construction projects.

The magnitude of construction projects in excess of $10,000,000 should be shown in increments of $10,000,000 (e.g. $20,000,000 to $30,000,000).

536.206 Liquidated damages.

(a) The liquidated damages provisions shall be included in construction contracts that are expected to exceed the small purchase limitation. The provision may be included in construction contracts that are within the small purchase limits when it is in the best interest of the Government.

(b) The rate of liquidated damages included in the solicitations shall reflect the probable damages the Government may suffer, which include items such as:

(1) The added cost of contract administration and supervision,

(2) The rental the Government would have to pay if construction is not completed on schedule, and

(3) The cost of monies.

[49 FR 10860, Mar. 22, 1984, as amended at 50 FR 10057, Mar. 13, 1985; 50 FR 36084 Sept. 5, 1985]

Subpart 536.3—Special Aspects of Sealed Bidding in Construction Contracting

536.302-70 Charges and deposits for bidding documents.

This subsection is applicable to construction procurements, including repairs and alterations.

(a) Generally, bid documents will be provided free and without a requirement for either a refundable deposit or a nonrefundable charge, except as provided in paragraph (c), below. Bid documents will be provided free for review purposes to plan rooms, contractor service facilities, and other similar places having a legitimate interest in the bidding process.

(b) To encourage the return of specifications and drawings to GSA, a note similar to the following, shall be prominently placed in each solicitation:

NOTE: We request your cooperation in returning the bid documents to GSA within 20 calendar days after bid opening date.

(c) If the contracting officer determines before issuance of the solicitation that an insufficient number of sets of bid documents were returned on previous projects, a refundable bid document deposit may be required

Under extraordinary circumstances, a nonrefundable charge may be required for bid documents if approved by the head of the contracting activity.

(1) The amount of deposit for bid documents should be determined on the basis of the actual printing costs of the documents. The following table is for guidance only, and the contracting officer may require amounts higher or lower than those shown. Deposits should not be so high as to discourage bidder participation. Refundable bid document charges are intended to ensure the return of bid documents to the Government for use by the successful contractor and Government personnel, and thus minimize the need for duplication of additional sets. When the administrative cost of processing bid document deposits and returning bid documents is greater than the value of returned documents, the contracting officer should not require deposits.

Estimated project cost range	Guide for refundable bid document deposit
Up to $1,000,000	None
$1,000,000 to $5,000,000	$30
$5,000,000 to $10,000,000	40
$10,000,000 and over	50

(2) When a bid document deposit is required, the presolicitation notice shall require that the deposit be made by certified check, cashier's check, or money order payable to the General Services Administration. If a deposit is not submitted as specified, a reasonable attempt must be made to obtain the deposit in the proper form without delay. A record of the attempt must be placed in the contract file. The document deposit will be refunded if bid documents are returned in good condition, without marks, notes, or mutilations, within 20 calendar days after bid opening. Refunds will not be made for bid documents returned more than 20 days after bid opening.

(3) The contracting officer shall cite the amount of the refundable deposit on Standard Form 1417, Pre-Solicitation Notice (Construction Contract).

[49 FR 10860, Mar. 22, 1984, as amended at 50 FR 10057, Mar. 13, 1985; 51 FR 5334, Feb. 13, 1986]

536.303 Invitations for bids.

The invitation for bids must include the following, when applicable:

(a) Special instructions concerning bids and awards of contracts that include base bid, alternatives, and/or options (see GSAR 536.570-4).

(b) Instructions concerning the prebid conference (see FAR 14.207, Prebid Conference).

[51 FR 5334, Feb. 13, 1986]

536.303-70 Bids that include alternates.

(a) The base bid must include all features that are essential to a sound and adequate building design. However, if it appears that funds available for a project may be insufficient to include all desired features in the base bid, the contracting officer may issue a solicitation for a base bid and include one or more alternates in the order of priority. Alternates may be used only when they are clearly justified and should involve substantial amounts of work in relation to the base bid. Their use must be limited and should involve only "add" alternates.

(b) The language used in soliciting alternates must be approved in writing by counsel.

(c) All solicitations requiring a base bid and alternates must include the Alternate II provision at GSAR 552.236-73, Basis of Award—Construction Contract, which prescribes the method for evaluating bids.

(d) Before opening bids that include alternates, the contracting officer shall determine and record in the contract file the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening and must be the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid plus the combination of alternate items do not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid and the same combination of alternate items.

[51 FR 5334, Feb. 13, 1986]

536.303-71 Bids that include options.

(a) Subject to the limitations in paragraph (c) below, the contracting officer may include options in contracts when it is in the Government's interest.

(b) The appropriate use of options may include, but is not limited to, the following:

(1) When additional work is anticipated but funds are not expected to be available at the time of award and it would not be practicable to award a separate contract or to permit an additional contractor to work on the same site.

(2) When fixed building equipment, e.g. elevators, escalators, etc., will be installed under the construction contract and it is advantageous to have the installer of the equipment maintain and service the equipment during the warranty period.

(c) The contracting officer shall not employ options if—

(1) The prospective option represents known firm requirements for which funds are available unless competition for the option quantity is impracticable once the initial contract is awarded; or

(2) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable.

(d) Solicitations containing option provisions shall state the period within which the options may be exercised.

(e) The solicitations shall state whether the basis of award is inclusive or exclusive of the options. Before a solicitation that includes evaluated options is issued, the contracting officer shall make a determination that there is reasonable certainty that funds will be made available to permit exercise of the option.

(f) The language of all solicitation provisions for options shall be approved, in writing, by counsel.

(g) All solicitations requiring a base bid and options shall include the Alternate I provision at GSAR 552.236-73, Basis of Award—Construction Contract, which prescribes the method of evaluation of bids.

[50 FR 1536, Jan. 11, 1985]

536.303-72 Bids that include alternatives and options.

(a) Solicitations may include alternates and options when the conditions in GSAR 536.303-70, Bids that include alternates, and GSAR 536.303-71, Bids that include options, are satisfied. In such solicitations, the low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening, plus (3) all options designated to be evaluated.

(b) In the case of options associated with alternates, the basis of award may require the evaluation of such options if the related alternate is selected.

(c) All solicitations requiring a base bid, alternates and options shall include the Alternate III provision at GSAR 552.236-73, Basis of Award—Construction Contract, which prescribes the method of evaluation of bids.

(d) Before opening bids that include alternates and options, the contracting officer shall determine and record in the contract file the amount of funds available for the project (i.e., for the base bid and alternate work). The amount recorded shall be announced at the beginning of the bid opening. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid and evaluated options plus such a combination of alternate items does not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid, the evaluated options, and the same combination of alternate items.

[50 FR 1536, Jan. 11, 1985]

536.370 Exercise of options.

(a) When exercising an option, the contracting officer shall notify the contractor, in writing, within the time period specified in the contract.

(b) The contracting officer may exercise options only after determining that—

(1) Funds are available;

(2) The requirement covered by the option fulfills an existing Government need; and

(3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors considered.

(c) Before exercising an option, the contracting officer shall determine that such action is in accordance with the terms of the option and the requirements of this section. The written determination shall be included in the contract file.

(d) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority. In addition, when exercising an unpriced and or unevaluated option cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302 and GSAR 517.207).

[50 FR 1536, Jan. 11, 1985, as amended at 50 FR 10057, Mar. 13, 1985]

Subpart 536.5—Contract Clauses

536.570 Supplemental solicitations and clauses.

[50 FR 1536, Jan. 11, 1985]

536.570-1 Definitions.

The contracting officer shall insert the clause at 552.236-70, Definitions, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated.

536.570-2 Authorities and limitations.

The contracting officer shall insert the clause at GSAR 552.236-71, Authorities and Limitations, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limitation.

[50 FR 1536, Jan. 11, 1985]

536.570-3 Specialist.

The contracting officer shall insert the clause at 552.236-72, Specialist, in construction contracts when the technical sections of the contract require unusual experience or specialized facilities for adequate contract performance.

§ 536.570-4 Basis of award—construction contract.

The contracting officer shall insert a provision substantially the same as the provisions at GSAR 552.236-73, Basis of Award—Construction Contract, in solicitations for fixed price construction contracts except when: (a) The solicitation requires the submission of a lump sum bid only; (b) the solicitation is for an indefinite quantity contract; or (c) the contract amount is not expected to exceed the small purchase limitation. If the solicitation requests the submission of a base bid and unit prices, the contracting officer shall use the basic provision. If the Solicitation requests the submission of a base bid and options the contracting officer shall use the provision with its Alternate I. If the solicitation requests the submission of a base bid and alternates, the contracting officer shall use the provision with its Alternate II. If the solicitation requests the submission of a base bid, alternates, and options, the contracting officer shall use the provision with its Alternate III.

[50 FR 50170, Dec. 9, 1985]

536.570-5 Working hours.

The contracting officer shall insert the clause at 552.236-74, Working Hours, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limitation.

536.570-6 Use of premises.

The contracting officer shall insert the clause at 552.236-75, Use of Premises, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated.

536.570-7 Measurements.

The contracting officer shall insert the clause at 552.236-76, Measurements, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated.

536.570-8 Specifications and drawings.

The contracting officer shall insert the clause at GSAR 552.236-77, Specifications and Drawings, in contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract is expected to exceed the small purchase limitation.

[50 FR 1536, Jan. 11, 1985]

536.570-9 Shop drawings, coordination drawings, and schedules.

The contracting officer shall insert the clause at GSAR 552.236-78, Shop Drawings, Coordination Drawings, and Schedules, in contracts when construction is contemplated and the contract is expected to exceed the small purchase limitation.

[50 FR 1537, Jan. 11, 1985]

536.570-10 Samples.

The contracting officer shall insert the clause at 552.236-79, Samples, in construction contracts when the technical sections of the contract require the submission and approval of samples.

536.570-11 Heat.

The contracting officer shall insert the clause at 552.236-80, Heat, in contracts, as appropriate, when construction, dismantling, demolition, or removal of improvements is contemplated.

536.570-12 Use of equipment by the Government.

The contracting officer shall insert the clause at 552.236-81, Use of Equipment of the Government, in contracts requiring heating and air-conditioning of existing buildings when it may be necessary for the Government to operate all or part of the equipment before final acceptance of the contract.

536.570-13 Subcontracts.

The contracting officer shall insert the clause at 552.236-82, Subcontracts, in solicitations and contracts for construction when the contract is expected to excess the small purchase limit.

536.570-14 Furnishing information and records.

The contracting officer shall insert the clause at GSAR 552.236-83, Furnishing Information and Records, in solicitations and contracts when construction, dismantling, demolition or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limitation.

[50 FR 1537, Jan. 11, 1985]

536.570-15 Government rights (unlimited).

The contracting officer shall insert the clause at 552.236-84, Government Rights (Unlimited), in contracts for architect-engineer services and construction involving architect-engineer services, except when the clause at 552.236-85 is required.

536.570-16 Drawings and other data to become property of the Government.

The contracting officer shall substitute the clause at 552.236-85, Drawings and Other Data to Become Property of Government, for the clause at 552.236-84 in contracts for architect-engineer services and construction involving architect-engineer services, when the sole property rights and exclusive control over the design and data are required by the Government.

[49 FR 10860, Mar. 22, 1984, as amended at 50 FR 1537, Jan. 11, 1985]

PART 537—SERVICE CONTRACTING

Subpart 537.1—Service Contracts—General

Sec.

537.101 Definitions.
537.106 Funding and term of service contracts.
537.110 Solicitation provisions and contract clauses.

Subpart 537.2—Consulting Services

537.201 Definitions.
537.205 Management controls.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10862, Mar. 22, 1984, unless otherwise noted.

Subpart 537.1—Service Contracts—General

537.101 Definitions.

"Building service contract" means a contract for services relating to the operation and maintenance of a building, e.g., janitorial; window washing; snow removal; trash removal; lawn and grounds care; inspection, maintenance and repair of fixed equipment (elevators, air-conditioning, and heater systems, etc.) and protection or guard service.

537.106 Funding and term of service contracts.

Services are generally viewed as chargeable to the appropriate current at the time the services are rendered. However, a need may rise in one fiscal year for services which, by their nature, cannot be separated for performance in separate fiscal years. The determination to charge the appropriation current on the date of contract award, or to charge the appropriation current at the time services are rendered, depends upon whether the services are "severable" or "entire." A contract which is "entire" is chargeable to the fiscal year in which the contract is awarded, notwithstanding that performance may extend into the following fiscal year. However, where the services are continuing or recurring in nature, the contract is severable and the services must be charged to the fiscal year in which they are rendered. Service contracts which are "severable" may not cross fiscal year lines in the absence of statutory authority. Based on these principles the following rules apply:

(a) The performance period of a service contract funded by an annual appropriation may cross fiscal years when a bona fide need for the service exists during the funded fiscal year and the contract calls for an end item that cannot be subdivided for separate performance in each fiscal year (e.g., contracts for experts or consultants, contracts for a one-time performance of services such as window washing, carpet cleaning, etc., and contracts for appraisal or auctioneer services).

(b) One-year indefinite quantity or requirements services contracts (e.g., contracts for carpet cleaning, drapery cleaning, carpet laying, etc.) funded by annual appropriations may extend beyond the fiscal year in which it is awarded; provided the specified minimum quantities, if any, are ordered in the initial fiscal year and the contract includes the clause at FAR 52.232-19, Availability of Funds for Next Fiscal Year. One-year contracts with option provisions to extend the performance period for additional years may also be used. However, the clause at 552.232-77, Availability of Funds, shall be used in lieu of the FAR clause at 52.232-19.

(c) The performance period of a contract for severable services (e.g., janitorial, guard, trash removal, mechanical equipment maintenance, etc.) may not cross fiscal years unless authorized by law. (See 31 U.S.C. 668 and 699.) The Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 260), authorizes contracts for periods not to exceed three years for the operation, maintenance, and repair of fixed building equipment in Federally owned buildings (40 U.S.C. 490(a)(14)) and contracts for periods not exceeding ten years for utility services (40 U.S.C. 481(a)(3)). Contracts for these services may be awarded for the performance periods indicated without an "Availability of Funds" clause.

537.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.237-70, Qualifications of Offerors, in solicitations and contracts for building services when the contract amount is expected to exceed the small purchase limitation. A supplemental provision may be used with this provision to outline specific qualification requirements for individual contracts.

(b) The contracting officer shall insert the clause at 552.237-71, Qualifications of Employees, in solicitations and contracts for building services when the amount is expected to exceed the small purchase limitation.

Supplemental clauses may be used with the clause at 552.237-71 to outline specific requirements regarding employees who will perform work on contracts.

(c) The contracting officer shall insert the certification at 552.237-72, Certification Regarding "Quasi-Military Armed Forces," in solicitations and contracts for guard service.

[49 FR 10862, Mar. 22, 1984, as amended at 53 FR 30844 Aug. 16, 1988]

Subpart 537.2—Consulting Services

537.201 Definitions.

The term "consulting service" as defined in FAR 37.201 does not include services that are directly required for performance of operations necessary to accomplish substantive agency missions. Examples of services not included are: Architect-Engineer services and other associated services directly related to a particular structure; roofing consulting services; services of auctioneers, realty-brokers, surveyors, and appraisers; automated data processing support services; research and development; technology assessments; or services in support of intervention or litigation.

[52 FR 6563, Mar. 4, 1987]

537.205 Management controls.

Heads of contracting activities, as defined in 502.101, are responsible for approving requests for consulting service contracts of $100,000 or less for their assigned areas of responsibility, except for contracts to be obligated during the fourth quarter of the fiscal year. The Associate Administrator for Administration is responsible for approving requests for consulting service contracts over $100,000 and for approving requests, regardless of dollar value, for contracts to be obligated during the fourth quarter of the fiscal year. All requests for consulting services must be processed in accordance with the requirements of GSA Order, Procurement of Consulting Services (ADM 2800.12C).

[52 FR 6563, Mar. 4, 1987]

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING [RESERVED]

PART 539—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES [RESERVED]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 542—CONTRACT ADMINISTRATION

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10863, Mar. 22, 1984, unless otherwise noted.

Subpart 542.2—Assignment of Contract Administration

542.200 Scope of subpart.

This subpart prescribes the policies and procedures for contract administration.

542.200-70 Policy.

(a) Contract administration is an essential element of the procurement process which, among other things, ensures the delivery of the Government's requirements in accordance with all contract terms and conditions. Accordingly, contracting directors must ensure that contract administration activities are performed by qualified personnel and in an effective manner.

(b) In some cases, contract administration may be performed by the contracting officer who awarded the contract. In others, it may be assigned to an administrative contracting officer (ACO) located within the contracting office. Management also may establish a separate contract administration office (CAO) consistent with the nature and complexities of the contracts awarded by contracting offices, the need to provide for performance of contract administration functions at or near the contractor's facility or the place of performance, and the availability of resources. FAR 42.202 and 542.202 prescribe policies and procedures for the assignment of contract administration responsibility in those instances where a separate contract administration office has been established or where it has been delegated to an ACO within the contracting office.

(c) The contracting officer ultimately is responsible for the performance of contract administration. In carrying out the responsibility, the contracting officer may designate representatives to perform specified functions. Such representatives may be designated for activities such as quality assurance, production, price analysis, finance and various engineering and technical specialities. These representatives may not enter into or modify a contract or otherwise perform functions reserved for a contracting officer except to the limited extent permitted for construction contracts. (See 542.201.2(d).) Designations or authorities of these representatives must be in writing and communicated to the contractor.

542.201 Definitions.

As used in this subpart the following terms shall have the meanings set forth below:

(a) "Contract administration" means the performance and coordination of all actions subsequent to the award of a contract that the Government must take to obtain compliance with all contract requirements, including timely delivery of supplies or services, acceptance, payment, and closing of the contract. These actions also include all technical, financial, audit, legal, administrative and managerial services in support of the contracting offer. It may include such additional tasks as may be requested or needed by the contracting activity to include support in the pre-award phase of contracting.

(b) "Procuring Contracting Officer" (PCO) means, a contracting officer (see FAR Subpart 2.1). For purposes of this regulation, this term will be used where necessary to differentiate between procurement and administrative functional responsibilities when contract administration authority has been delegated to an ACO within a contracting office or a CAO.

(c) "Assignment of contract administration" means that process whereby identified functions, duties, or responsibilities related to the administration of contracts are assigned either by this part or by individual assignment to a contract administration office or an ACO within a contracting office.

(d) "Contracting Officer's Representative (COR), Contracting Officer's Technical Representative (COTR), or Contract Administrator" means an individual designated and authorized by the contracting officer to perform contract administration activities on his/her behalf within the limits of delegated authority. Normally, these individuals do not have authority to commit the Government; i.e., signatory authority. In order to commit or bind the Government, a valid contracting officer warrant is needed. COR's or COTR's for construction contracts may possess contracting officer warrants to issue change orders not to exceed $25,000.

(e) for definitions of other commonly used contract administration terms see FAR Subpart 2.1 and GSAR Subpart 502.1 of this Chapter.

542.202 Assignment of contract administration.

(a) In addition to consulting with the CAO in determining whether individual functions listed in FAR 42.302(a) should be witheld, the contracting officer may consult with an ACO within a contracting office as appropriate.

(b) For individual contracts or groups of contracts, the contracting officer may delegate, to an ACO within a contracting office or the CAO, functions not listed in FAR 42.302 and 542.302(b) provided that:

(1) The requirements of FAR 42.202(c) are met and,

(2) The Assistant Administrator for Acquisition Policy approves the additional delegation. Requests for additional delegations must be submitted through the Commissioner or Assistant Administrator of the appropriate service or staff office to the Office of Acquisition Policy. If a service/office is providing contracting support for another service/office the request shall be sent to the Commissioner/Assistant Administrator of the contracting service/office. That official shall coordinate as necessary with the affected service/office.

(c) In addition to the requirements of FAR 42.202(d), the contracting officer shall provide or make available, as appropriate, a complete copy of the contract file to the individual assigned administration responsibility to the CAO or ACO within a contracting office.

(d) References to responsibilities of a contract administration office apply also to an ACO within a contracting office when appropriate.

542.204 Supporting contract administration.

References in FAR 42.206 to a CAO apply also to an ACO within a contracting office when appropriate.

542.206 Reassignment of contract administration.

References in FAR 42.206 to a CAO of initial assignment and to a successor CAO apply also to an ACO within a contracting office when appropriate.

Subpart 542.3—Contract Administration Office Functions

542.301 General.

References to assignment of contract adminstration under FAR Subpart 42.2 to a CAO apply also to an ACO within a contracting office when appropriate.

542.302 Contract administration functions.

(a) Normal contract administration functions which are identified at FAR 42.302(a) are to be performed to the extent they apply by a contracting officer awarding a contract, an ACO within a contracting office or by a separate CAO.

(b) The ACO within the contracting office or CAO shall perform the functions listed at FAR 42.302(b) and the additional functions listed below only when and to the extent they are specifically authorized by the contracting officer or by directive issued by the contracting activity.

(1) Negotiate and issue priced or unpriced orders under indefinite delivery type contract and basic ordering agreements.

(2) Make termination decisions on purchase/delivery orders with coordination or any required concurrence by the PCO. Process the action.

(3) Process termination for default for contracts after PCO termination decision.

(4) Process contractor claims and make final determination.

(5) Assess liquidated damages as appropriate.

(6) Issue cure or show cause notices in accordance with the requirements of FAR 49.402-3(b).

(7) Issue change orders not to exceed $25,000 for construction contracts.

(c) In addition to the instruction at FAR 42.302(c), additional functions not listed at 542.302(b)(1)-(7), or not otherwise delegated, remain the responsibility of the contracting office.

(d) GSA contracting activities may supplement the foregoing lists with additional functions peculiar to their programs upon the approval of the Assistant Administrator for Acquisition Policy. Requests for additional functions must be submitted through the Commissioner or Assistant Administrator of the appropriate service/office to the Office of Acquisition Policy. If a service/office is providing contracting support for another service/office, the request shall be sent to the Commissioner/Assistant Administrator of the contracting service/office. That official shall coordinate as necessary with the other affected service/office.

Subpart 542.4—Correspondence and Visits

542.401 Contract correspondence.

All references in FAR 42.401 to the CAO apply also to an ACO within a contracting office when appropriate.

542.402 Visits to contractor's facilities.

All references in FAR 42.402 to the CAO apply also to an ACO within a contracting office when appropriate.

542.470 Implementation.

Heads of contracting activities may issue implementing guidelines or procedures. Before issuance of such documents, the concurrence of the Assistant Administrator for Acquisition Policy shall be obtained.

Subpart 542.11—Production Surveillance and Reporting

542.1107 Contract clauses.

(a) The contracting officer shall insert the clause at section 552.242-70, Status Report of Orders and Shipments, in solicitations and indefinite quantity and requirements contracts for stock or special order program items. The clause may also be used in idenfinite delivery definite quantity contracts for stock or special order program items when close monitoring is necessary because numerous shipments are involved.

(b) The contracting officer shall insert a clause substantially the same as the clause at 552.242-71, Preproduction Samples, in solicitations and contracts for supplies when the submission of preproduction samples will be required. Preproduction samples may be required to determine that the contractor can produce supplies which comply with the contract specifications, and to provide a quality standard for reference during the life of the contract.

(c) The contracting officer shall insert the clause at 552.242-72, Disposition of Production Samples, in solicitations and contracts for supplies when source inspection is required and testing is to be conducted at a Government facility.

[49 FR 10863, Mar. 22, 1984, as amended at 52 FR 21057, June 4, 1987]

Subpart 542.12—Novation and Change-of-Name Agreements

542.1203 Processing agreements.

In determining whether it is in the Government's interest to recognize a successor in interest under FAR 42.12, the contracting officer shall consider, in addition to information provided by affected contracting and contract administration offices, information provided by the agency small business technical advisor where the contract was awarded to a small business under a small business set-aside and the third-party successor is a large business. Under the following conditions the contracting officer should refuse to recognize the successor and nonconcur in the transfer of the contract(s):

(a) There is adequate reason to believe that the transaction is intended to circumvent the requirements and objectives of the small business program, or

(b) the contract involved is a multiple award schedule (MAS) contract and other MAS small business contracts exist for the same special item number(s). If the MAS contract involves both set-aside and non-set-aside special item numbers, the contracting officer shall cancel that part of the contract related to the set-aside items and process the novation request for the non-set-aside items under FAR 42.12.

[53 FR 34090, Sept. 2, 1988]

Subpart 542.70—Bankruptcy, Insolvency or Dissolution of a Business

SOURCE: 52 FR 11826, Apr. 13, 1987, unless otherwise noted.

542.7000 Scope of subpart.

This subpart prescribes the procedures to be followed when a contractor is found to be in financial difficulty or has filed for bankruptcy.

542.7001 General.

Prompt action is vital in the case of a contractor who has been determined insolvent or who has filed under any of the applicable laws relating to bankruptcy, insolvency, and dissolution of businesses (11 U.S.C. 1 et seq.) to assure that the Government's rights are protected in any formal proceedings. Terminated contracts as well as current contracts with the contractor must be considered in any action contemplated. Contracting officers may be advised of such difficulties by the cognizant quality assurance specialist (QAS) via GSA Form 1679, Contract Administration, contracting officer's representatives (COR), the Office of Finance, the Office of Inspector General, or other means, e.g., newspaper items, Dun and Bradstreet, an industry association, prime contractors, subcontractors or vendors, industry competitors, other Federal agencies, or financial institutions. The contracting officer shall verify the accuracy of the information received and when appropriate follow the procedures outlined in section 542.7002.

542.7002 Procedures.

542.7002-1 Contractor experiencing serious financial difficulty.

When a contractor is experiencing serious financial difficulties the contracting officer shall proceed as follows:

(a) Determine whether the contractor is delivering supplies and/or performing the services within the timeframes specified in the contract and whether the contractor is making satisfactory progress in connection with future deliveries or performance.

Obtain, if needed, the recommendations of the appropriate QAS or COR.

(b) If a determination is made that the contractor has failed without excuse to deliver or perform in accordance with the terms of the contract or has failed to make progress so as to endanger performance of the contract, the contracting officer should consider terminating the contract for default in accordance with the procedures outlined at FAR 49.402-3 and the Termination for Default clause in the contract.

(c) If contract termination is not considered necessary, continue to monitor contract(s) by requesting that the QAS or COR visit the contractor's plant or the work site more often than usual to ascertain that progress is being made.

(d) If a small business contractor is involved, notify the regional Small Business Administration (SBA) office.

(e) If the contract has a performance bond and/or payment bond, the bonding company should be notified if the circumstances of the particular case dictate such notification.

542.7002-2 Contractor that has filed for bankruptcy.

When a contractor has filed for bankruptcy, the contracting officer shall proceed as follows:

(a) Notify the contracting director, assigned counsel, the Office of Finance and other interested parties.

(b) Determine whether the contractor is performing in accordance with the terms of the contract and/or is making satisfactory progress towards completion of the contract. If a determination is made that the contractor has failed without excuse to deliver or perform in accordance with the terms of the contract or failed to make progress so as to endanger performance of the contract, the contracting officer should consider terminating the contract for default in accordance with the procedures outlined at FAR 49.402-3 and the Termination for Default clause in the contract. Termination must not be effected without concurrence of assigned counsel, who will coordinate such action with the assigned Assistant United States Attorney.

(c) Determine the status of and provide for the protection and disposition of Government-owned property, if applicable.

(d) If special safeguards for Government property controlled by the contractor are needed, the contracting officer should determine the names, addresses, and phone numbers of the local Government officials concerned in the bankruptcy proceedings, e.g., sheriff, marshal, or the Receiver or Trustee in bankruptcy, if assigned.

(e) Transmit immediately all relevant communications to assigned counsel; e.g., notice of bankruptcy, notice of meeting of creditors, plan of arrangement, status of such plan, claims bar date and address of the Bankruptcy Court where proceedings were filed. Assigned counsel shall immediately transmit a copy of the notice of bankruptcy to the appropriate office in the Office of General Counsel (i.e., LG, LP, or LR) or to the assigned Assistant United States Attorney.

(f) Prepare, in consultation with assigned counsel, the preliminary, contingent and, after reprocurement (if any), final proof of claim. Such proofs of claim will be forwarded by the assigned counsel to the appropriate office in the Office of General Counsel (i.e., LG, LP, or LR) or to the assigned Assistant United States Attorney.

(g) Consult with assigned counsel regarding possible setoffs of Government claims from retained and unpaid contractor earnings.

(h) Advise the Inspector General whenever there is reason to believe that the contractor may have fraudulently transferred assets before filing for bankruptcy. Also advise the Inspector General in any case where the contracting officer is aware of an ongoing audit or investigation of the contractor.

542.7002-3 Contractor dissolving business.

Upon receipt of information that a contractor intends to dissolve his business or to cease operations for whatever reason, e.g., because of retirement, fire sale of business (without public notice), etc., the contracting officer shall verify the accuracy of the information. If the information is accurate, the contracting officer shall request the QAS or COR verify status of contract(s) and notify other directly interested parties. However, the QAS or COR should not be requested to make special contract administration visits unless all other efforts to obtain the necessary information have failed. If a claim against the contractor is either pending or outstanding, notify assigned counsel and simultaneously obtain information that would aid in finalizing the amount of claim(s).

PART 543—CONTRACT MODIFICATION

Subpart 543.1—General

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543.100 Scope of subpart.
543.102 Policy.
543.170 Pricing of modifications to leases of real property.

Subpart 543.2—Change Orders

543.202 Authority to issue change orders.
543.205 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

Subpart 543.1—General

543.100 Scope of subpart.

This subpart sets forth policies and procedures for issuing contract modifications and for pricing modifications to leases of real property.

[50 FR 10057, Mar. 13, 1985]

543.102 Policy.

A modification for work that is outside the scope of a contract shall be treated as a new procurement. Accordingly, such modification must be justified and approved in accordance with FAR Subpart 6.3, and must be synopsized in accordance with the requirements of FAR Subpart 5.2 and GSAR Subpart 505.2. Such a modification must be affected through a supplemental agreement by mutual action of the parties.

[50 FR 10057, Mar. 13, 1985]

543.170 Pricing modifications to leases of real property.

The contracting officer shall ensure that modifications to leases of real property comply with the procedures in FAR 15.804.

[50 FR 10057, Mar. 13, 1985]

Subpart 543.2—Change Orders

543.202 Authority to issue change orders.

(a) Change orders shall be issued only by the procuring contracting officer with the following exceptions:

(1) The limited circumstances provided for by FAR 42.202(c) and 542.202(b) of this chapter.

(2) Contracting officer's representatives (COR) for construction contracts may be given contracting officer warrants to issue change orders not to exceed $25,000 for those situations when time does not permit action by the contracting officer.

(b) Change orders shall be issued by the contracting officer after coordination as appropriate, with counsel, quality control, finance, audit or other technical personnel.

[49 FR 10865, Mar. 22, 1984]

543.205 Contract clauses.

(a) The contracting officer shall insert the clause at 552.243-70, Pricing of Adjustments, in solicitations and contracts which are expected to exceed the small purchase limitation except cost type contracts.

(b) The contracting officer shall insert the clause at 552.243-71, Equitable Adjustments, in solicitations and contracts for (1) dismantling, demolishing, or removing improvements; and (2) construction, when a fixed-price contract is planned and the contract price is expected to exceed the small purchase limit.

[49 FR 10865, Mar. 22, 1984]

PART 544—SUBCONTRACTING POLICIES AND PROCEDURES—[RESERVED]

PART 545—GOVERNMENT PROPERTY—[RESERVED]

PART 546—QUALITY ASSURANCE

Subpart 546.3—Contract Clauses

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546.301 Contractor inspection requirements.
546.302 Fixed-price supply contracts.
546.302-70 Inspection facilities.
546.302-71 Source inspection.
546.302-72 Charges for inspection and testing.
546.312 Construction contracts.
546.316 Responsibility for supplies.
546.316-70 Rejected supplies.

Subpart 546.4—Government Contract Quality Assurance

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546.402 Government contract quality assurance at source.
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546.470 Testing.
546.470-1 Acceptance testing.
546.470-2 Certification testing.
546.470-3 Qualification (QPL) testing.
546.470-4 Development testing.

Subpart 546.7—Warranties

546.710 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10865, Mar. 22, 1984, unless otherwise noted.

Subpart 546.3—Contract Clauses

546.301 Contractor inspection requirements.

Contracting officers in the Federal Supply Service shall insert the clause at GSAR 552.246-77, Contractor Inspection Requirements, in solicitations and contracts that provide for source inspection, except multiple award schedule contracts, motor vehicle contracts, and contracts awarded by the Special Programs Division, General Products Commodity Center, unless warranted by particular conditions of a contract.

[51 FR 8679, Mar. 13, 1986]

546.302 Fixed-price supply contracts.

In addition to the clause at FAR 52.246-2, the clauses prescribed in GSAR 546.302 relating to inspection must be included in solicitations and contracts under the circumstances indicated in the respective subsections. These clauses may be included in contracts established under the small purchase procedures if considered appropriate by the contracting officer.

[49 FR 10865, Mar. 22, 1984, as amended at 51 FR 8679, Mar. 13, 1986]

546.302-70 Inspection facilities.

(a) The contracting officer shall insert the clause at GSAR 552.246-70, Inspection Facilities, in solicitations and contracts for supplies to reserve the right of the Government to evaluate the acceptability and effectiveness of the contractor's inspection system. Under paragraph (b) of the clause, space must be provided in the solicitation for offerors to provide the required information.

(b) Paragraph (c) of the clause in GSAR 552.246-70 concerns the inspection of supplies of foreign origin. The requirements of this paragraph (c) of the clause may be waived: (1) When inspection services are available from another Federal agency on the basis of its primary inspection responsibility in a geographic area, (2) when an inspection interchange agreement exists with another agency concerning inspection at a contractor's plant, (3) when procurements to be made for AID specify the area or source, or (4) when other considerations will ensure more economical and effective inspection consistent with the best interests of the Government. When this portion of the clause is to be waived, a statement to that effect must be made in the schedule. Any such decisions should be fully coordinated with the appropriate quality assurance specialist.

[51 FR 8679, Mar. 13, 1986]

546.302-71 Source inspection.

The contracting officer shall insert the clause at GSAR 552.246-73, Source Inspection, in solicitations and contracts when it is determined that inspection is to be performed at the source.

[51 FR 8679, Mar. 13, 1986]

546.302-72 Charges for inspection and testing.

The contracting officer shall insert the clause at GSAR 552.246-74, Charges for Inspection and Testing, in solicitations and contracts that include the clause at GSAR 552.246-73.

[51 FR 8679, Mar. 13, 1986]

546.312 Construction contracts.

The contracting officer shall insert the clause at 552.246-71, Final Inspection and Tests, in solicitations and contracts for construction when a fixed price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. This clause supplements the Inspection of Construction clause at FAR 52.246-12.

546.316 Responsibility for supplies.

546.316-70 Rejected supplies.

The contracting officer shall insert the clause at 552.246-72, Responsibility for Supplies—Rejected Supplies, in solicitations and contracts for supplies when the contract amount is expected to exceed the small purchase limitation.

Subpart 546.4—Government Contract Quality Assurance

546.400 Scope of subpart.

This subpart prescribes policies and procedures which are to be used by the Federal Supply Service and which may be used by other GSA activities.

[51 FR 35221, Oct. 2, 1986]

546.402 Government contract quality assurance at source.

Contracts should provide for inspection of supplies to be performed at source under the following circumstances, unless brand name products are being purchased or supplies are being purchased using small purchase procedures (see FAR Part 13 and GSAR Part 513).

(a) The contract is for national requirements (including shipments to key GSA supply distribution facilities);

(b) The contract is a Schedule contract that has been selected for source inspection;

(c) The contract is for regional requirements;

(d) The contract is an indefinite delivery, definite quantity contract;

(e) The contract is for class 8010 items;

(f) The contract is for special purpose vehicles, trucks that are over 10,000 pounds gross vehicle weight (GVW), trucks weighing 10,000 pounds GVW or less that are not covered by a Federal standard, and vehicles to be shipped outside the conterminous United States; or

(g) When the contracting director determines for other reasons that it is in the best interest of the Government due to the critical nature of the material. In these instances, the contracting director shall notify the appropriate Contract Management Division that the contract provides for source inspection and explain the reason for inspecting at source.

[51 FR 35221, Oct. 2, 1986]

546.403 Government contract quality assurance at destination.

Contracts should provide for inspection to be performed at destination when—

(a) Supplies are being purchased using small purchase procedures outlined in FAR Part 13 and GSAR Part 513;

(b) Brand name products are being purchased;

(c) The Schedule contract has not been selected for source inspection;

(d) Standard vehicles are being purchased for domestic consignees; or

(e) Trucks weighing 10,000 pounds GVW or less are being purchased for domestic consignees using a Federal Standard.

[51 FR 35221, Oct. 2, 1986]

546.470 Testing.

Testing to determine conformance with specifications and standards may be conducted at facilities of Federal agencies, manufacturers, independent testing laboratories, and others, as appropriate.

[51 FR 35221, Oct. 2, 1986]

546.470-1 Acceptance testing.

(a) Acceptance testing is conducted to determine conformance with requirements of purchase descriptions or specifications before a shipment is accepted. Such testing must not be solely for the purpose of furnishing information to a producer or vendor as to conformance of an article or commodity with specification requirements.

(b) The cost of services for acceptance testing of representative samples of a shipment normally will be borne by GSA. However, if the samples tested fail to meet the requirements of the specification or purchase description, the contractor shall be required to pay any additional costs incurred for a retest as a result of the failure.

[51 FR 35221, Oct. 2, 1986]

546.470-2 Certification testing.

(a) Certification testing is conducted to determine conformance of an article or commodity with a specification requirement for the purpose of executing a certificate of compliance when a certification is called for by the specification.

(b) A certificate from a recognized laboratory may be a requirement in a Federal specification. When there is a lack of suitable commercial testing facilities, producers or vendors may obtain a certification from a Government laboratory, and are required to bear the cost of testing, including all items of the cost. In this event, GSA will, when feasible, arrange for the required testing upon receiving a request from a producer or vendor and upon payment of the required fee.

[49 FR 10865, Mar. 22, 1984, as amended at 51 FR 35221, Oct. 2, 1986]

546.470-3 Qualification (QPL) testing.

(a) Qualification testing is conducted to determine conformance of an article or commodity with the qualification requirements of a specification for inclusion of the article or commodity in a Qualified Products List (QPL).

(b) When QPL tests will serve predominantly the interest of the producer or vendor, GSA shall fix the test fee in such an amount as will recover the cost of conducting the test, including all components of such cost determined in accordance with accepted accounting principles. Usually, the producer or vendor shall be required to bear the cost of testing to qualify an article or commodity for inclusion in a qualified products list, except when it is determined that making these tests will serve predominantly the interest of the producer or vendor. This may be the case where adequate competition has not been developed in industry because of an insufficient number of qualification approvals, or sources of supply have not been sufficiently established to ensure availability.

(c) Normally, payment shall be made to the General Supply Fund and appropriate reimbursement shall be made by GSA to the agency whose laboratory conducted the tests. In certain cases the producer or vendor may be required to submit his/her product to one or more independent testing laboratories approved by GSA. In these cases, the producer or vendor may be directed to pay the testing fee directly to the laboratory that conducted the test.

(d) Other instructions concerning establishment of qualified products lists, qualification of products, etc., are contained in FAR 9.2, FPMR 41 CFR Part 101-29 and the Federal Standardization Handbook.

546.470-4 Development testing.

(a) Development testing is conducted to determine whether a new article or commodity that is not covered by an existing specification may be suitable for Government use, or to aid in the development of contemplated specifications and standards.

(b) When tests are conducted in the development of specifications or standards, those procedures in 546.470-3(b) and (c) pertaining to test fees shall apply.

Subpart 546.7—Warranties

546.710 Contract clauses.

(a) The contracting officer shall insert the clause at 552.246-76, Warranty of Pesticides, in solicitations and contracts involving the procurement of pesticides.

(b) The contracting officer shall insert the clause at 552.246-75, Guarantees, in solicitations and contracts for construction when the contract amount is expected to exceed the small purchase limitation.

PART 547—TRANSPORTATION

Subpart 547.3—Transportation in Supply Contracts

Sec.

547.300 Scope of subpart.
547.302 Place of delivery—f.o.b. point.
547.302-70 Delivery zones—Indefinite delivery contracts: Requirements contracts for stock and non-stock items.
547.304 Determination of delivery terms.
547.304-70 F.o.b. origin.
547.304-71 F.o.b. origin, freight prepaid.
547.305 Solicitation provisions, contracts clauses, and transportation factors.
547.305-70 Placarding railcar shipments.
547.305-71 Shipping points.
547.305-72 Contracting for agencies located in Alaska.
547.370 Use of appropriate delivery terms.
547.371 Restrictions on transportation to military installations.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10867, Mar. 22, 1984, unless otherwise noted.

Subpart 547.3—Transportation in Supply Contracts

547.300 Scope of subpart.

This subpart prescribes policies and procedures which are applicable to the Office of Federal Supply and Services acquisitions.

547.302 Place of delivery—f.o.b. point.

547.302-70 Delivery zones—Indefinite delivery contracts: Requirements contracts for stock and non-stock items.

(a) Each solicitation shall specify the zone or zones when zone prices are required.

(b) Zone means the officially established geographic area for each GSA Region.

(c) Zones shall not be subdivided or altered unless such a change is approved by the Director, Office of Procurement, Office of Federal Supply and Services.

(d) The contracting officer shall determine which zones are required for each solicitation. Also, the contracting officer shall prepare an appropriate contract file justification for the number of zones used in the solicitation.

547.304 Determination of delivery terms.

547.304-70 F.o.b. origin.

(a) When a contract specifies "f.o.b. origin," a Government bill of lading (GBL) normally shall be issued before shipment for use by the contractor unless the shipment will be made via postal or parcel services. If the shipment is extremely urgent and a GBL cannot be issued in a timely manner, contracting officers may, after coordination with the transportation officer concerned, authorize shipment on a commercial bill of lading. If the transportation cost is estimated not to exceed $100, the contractor shall be requested to ship on a prepaid basis and add the transportation charges to the invoice as provided in 547.304-71.

(b) When f.o.b. origin shipments are authorized to be made by commercial bill of lading (CBL), the contracting officer shall instruct the contractor to (1) obtain the signature of the origin carrier's agent on the original and all copies of the CBL; (2) annotate the original and all copies of the CBL with the phrase "TO BE CONVERTED TO U.S. GOVERNMENT BILL OF LADING"; and (3) forward the original to the office which authorized the use of CBL for the purpose of converting to a GBL.

547.304-71 F.o.b. origin, freight prepaid.

When the contract specifies "f.o.b. origin, freight prepaid," the contractor shall be requested to make shipment on a CBL and make payment to the transportation company. These prepaid CBLs shall not be converted to GBL's. The contracting officer shall instruct the contractor, in writing, to show the transportation charges as a separate item on the invoice for each individual shipment and include a copy of the prepaid freight bill. This method shall be used only when transportation costs are estimated not to exceed $100, unless a larger amount has been specifically authorized in writing by the contracting officer or his/her designated transportation officer.

547.305 Solicitation provisions, contract clauses, and transportation factors.

547.305-70 Placarding railcar shipments.

It is essential that the railcar is "spotted" for unloading with the proper car door positioned next to the unloading dock, platform, or warehouse door. Therefore, placards shall be placed on each door: one reading "UNLOAD FROM OTHER SIDE" and the other "UNLOAD FROM THIS SIDE." When applicable, the solicitation and contract shall include the clause at 552.247-70, Placarding Railroad Shipments.

547.305-71 Shipping points.

When f.o.b. origin prices are solicited, offerors shall be required to specify their shipping point(s) by providing street address, city, county, and state applicable to each item on which an offer is submitted. Spaces shall be provided in the solicitation for inserting this information.

547.305-72 Contracting for agencies located in Alaska.

(a) Solicitations for requirements of Federal agencies located in Alaska shall solicit offers on the basis of alternate delivery terms including f.o.b. Alaskan destination basis. When the requiring agency specifically requests delivery on other than an f.o.b. Alaskan destination basis, contracting officers shall verify the validity of such requests and document the case file.

(b) When feasible, offers involving delivery in Alaska shall be solicited f.o.b. origin, f.o.b. port of exit (Seattle), and f.o.b. Alaskan destination. All offers shall be evaluated on the basis of the lowest delivered cost to the ultimate destination.

(c) Federal supply schedules should include a delivery zone providing for delivery f.o.b. named Alaska destination to the extent that these destinations are served by regularly scheduled surface transportation. Contracting officers shall request assistance from the Region 10 Transportation Office in determining Alaska destination with regularly scheduled surface transportation.

547.370 Use of appropriate delivery terms.

If the contracting officer uses only one delivery term in the solicitation, the reasons for so doing shall be documented in the contract file.

547.371 Restrictions on transportation to military installations.

(a) DOD publications entitled "Terminal Facilities Guide" list the shipping and receiving capabilities and delivery restrictions at all military installations and are updated as changes occur. Copies of the guides are distributed to the GSA regional Transportation Division.

(b) For solicitations specifying direct delivery to military installations, contracts shall include a provision specifying any applicable delivery restrictions. The contracting officer shall verify receiving capabilities or restrictions with the appropriate Transportation Division before issuing the solicitation.

PART 548—VALUE ENGINEERING

AUTHORITY: 40 U.S.C. 486(c).

548.000 Scope of Part.

Pending revision of FAR coverage on value engineering all previously prescribed GSA policies, procedures, and forms shall remain in effect with the following modifications to the GSA Form 2894 (Rev. 6-76), Value Incentive Clause (Fixed Price Supply Contract).

(a) Paragraph 1.4 references the Patent Indemnity clause shall ensure that the most recent version of the clause is used; and

(b) Paragraph 1.5 references the Federal Procurement Regulations, 41 CFR Part 1-15 shall be changed to

Federal Acquisition Regulation, 48 CFR Part 31.

[49 FR 10868, Mar. 22, 1984]

PART 549—TERMINATION OF CONTRACTS

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549.001 Definitions.

Subpart 549.1—General Principles

549.111 Review of proposed settlements.

Subpart 549.4—Termination for Default

549.402-6 Repurchase against contractor's account.
549.402-7 Other damages.

Subpart 549.5—Contract Termination Clauses

549.502 Termination for convenience of the Government.
549.570 Submission of termination liability schedule.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10868, Mar. 22, 1984, unless otherwise noted.

549.001 Definitions.

(a) "Administrative costs", for the purpose of this part, means those costs, other than excess costs, incurred by the Government as a result of the contractor's default. Administrative costs include but are not limited to:

(1) Salaries and fringe benefits paid to Government employees which are assigned to a work activity (e.g., reprocurement activities) as a result of the default.

(2) Preaward survey expenses incurred in qualifying reprocurement contractors;

(3) Costs incurred in printing and distributing the reprocurement solicitation.

(b) "Excess costs", for the purposes of this part, means any costs, other than administrative costs, incurred by the Government as a consequence of the contractor's default in the reprocurement of similar supplies or services or in the resulting performance of such services by the Government.

[49 FR 34019, Aug. 28, 1984]

Subpart 549.1—General Principles

549.111 Review of proposed settlements.

(a) Proposed termination settlement between $25,000 and $100,000, shall be reviewed and approved by the contracting director as defined at GSAR 502.1.

(b) Proposed termination settlements over $100,000, shall be reviewed and approved by the head of the contracting activity as defined at GSAR 502.1.

(c) The head of the contracting activity may require review and approval of proposed termination settlements less than $25,000 at least one supervisory level above the contracting officer.

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 36084, Sept. 5, 1985]

Subpart 549.4—Termination for Default

549.402-6 Repurchase against contractor's account.

(a) After termination but prior to repurchase the contracting officer shall revalidate the original need for the supplies or services. The file shall be appropriately documented.

(b) Repurchase against a contractor's account usually shall be made on the basis of the original contract terms and conditions, including the specification, under which the contractor defaulted. If acceptable bids or offers cannot be obtained on this basis, similar supplies or services may be bought under specifications which will substantially satisfy the original requirement. Advice of counsel should be obtained before issuing a solicitation for similar supplies or services.

(c) In order to assist in protecting the Government's rights to recover excess costs, the contracting officer shall document the file to explain the circumstances surrounding any delay in repurchasing the terminated supplies or services.

549.402-7 Other damages.

(a) Under the default clause, the contracting officer may recover administrative costs when deemed in the best interest of the Government.

(b) A decision to recover administrative costs must give consideration to the following:

(1) The expected cost to the Government of documenting and supporting the assessment.

(2) The amount the Government expects to recover.

(c) Documents used to support an assessment of administrative costs must be detailed and must demonstrate that the added costs incurred by the Government were a direct result of the default.

(1) To support administrative labor costs, the contracting officer should keep a log or other record of:

(i) Name, position, and organization of each employee performing work activities as a consequence of the default.

(ii) Date(s) of work and time(s) spent by each employee on the repurchase.

(iii) Description of specific tasks performed (i.e., solicitation preparation, clerical).

(iv) Hourly rate of pay (straight time or overtime).

(v) Applicable fringe benefits.

(vi) Explanation of how the time spent by the employees during the reprocurement would have been used on other projects but for the default.

(2) Documents supporting other administrative costs (i.e., travel, per diem, printing and distribution of the repurchase contract) documentation of the costs incurred may be demonstrated by travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures.

(d) After deciding that the assessment of administrative costs is appropriate, and obtaining legal assistance under 501.670-5, the contracting officer must make a written demand on the contractor for the administrative costs incurred by the Government. The basis of calculating the costs being assessed shall be furnished to the contractor. A single demand letter may be used to recover excess costs and administrative costs. If the contractor fails to make payment, the contracting officer shall follow the procedures in FAR Subpart 32.6 to collect the debt owed the Government.

(e) The recovery of excess and/or administrative costs does not preclude the Government from exercising other rights or remedies which it may have under the terminated contract, by statute, or at common law.

[49 FR 34019, Aug. 28 1984]

Subpart 549.5—Contract Termination Clauses

SOURCE: 51 FR 195, Jan. 3, 1986, unless otherwise noted.

549.502 Termination for convenience of the Government.

(a) The contracting officer shall insert the clause at GSAR 552.249-70, Termination for Convenience of the Government (Fixed-Price) (Short Form), in all solicitations and contracts for the acquisition and maintenance of telephone systems to be funded through the Federal Telecommunications Fund (FT) when the supply portion of the contract does not exceed $100,000. This clause should be used together with the FAR clauses at 52.249-1 and 52.249-4.

(b) The contracting officer shall insert the clause at GSAR 552.249-71, Termination for Convenience of the Government (Fixed Price), in all solicitations and contracts for the acquisition and maintenance of telephone systems to be funded through the Federal Telecommunications Fund (FT) when the supply portion of the contract exceeds $100,000. This clause should be used together with the FAR clauses at 52.249-2 and 52.249-4.

549.570 Submission of termination liability schedule.

The contracting officer shall insert the provision at GSAR 552.249-72, Submission of Termination Liability Schedule, in all solicitations for the acquisition and maintenance of telephone systems to be funded through the Federal Telecommunications Fund (FT). This provision is to be used when either the clause at GSAR 552.249-70 or the clause at GSAR 552.249-71 is used.

PART 550—EXTRAORDINARY CONTRACTUAL ACTIONS

AUTHORITY: 40 U.S.C. 486(c).

Subpart 550.1—General

550.102 Policy.

Any Region, Service or Staff Office which receives a request for action under FAR Part 50 shall, within 5 working days, so notify the Assistant Administrator for Acquisition Policy by memorandum.

[49 FR 10868, Mar. 22, 1984]

PART 551—USE OF GOVERNMENT SOURCES BY CONTRACTORS—[RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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552.102 Incorporating provisions and clauses.
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552.222-75 Withholding.
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552.222-80 Certification of eligibility.
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552.246-70 Inspection facilities.
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552.246-72 Responsibility for supplies (rejected supplies).
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552.270-4 Historic preference.
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552.270-11 Subletting the premises.
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Subpart 552.3—Provision and Clause Matrixes

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552.319 Small purchases.
552.320-70 Utility services (sole supplier—regulated rates).
552.370 Leases of real property.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10868, Mar. 22, 1984, unless otherwise noted.

552.000 Scope of part.

This part (a) gives instructions for using provisions and clauses in solicitation and/or contracts; (b) sets forth the solicitation provisions and contract clauses prescribed by this regulation; (c) presents matrixes listing the GSAR provisions and clauses applicable to supply, service, construction, architect-engineer contracts, and contracts using small purchase procedures, and (d) presents matrixes listing FAR and GSAR provisions and clauses applicable to utility contracts (sole supplierregulated rates) and to leases of real property.

Subpart 552.1—Instructions for Using Provisions and Clauses

552.100 Scope of subpart.

This subpart explains the numbering system used in Subpart 552.2 and prescribes procedures for incorporating and identifying provisions and clauses in solicitations and contracts.

[50 FR 29403, July 19, 1985]

552.101 Using Part 552.

(a) *Definitions.* The definitions set forth in FAR 52.101(a) apply to this GSAR Part 552.

(b) *Numbering.* When a provision or clause in this Part has the same title as a similar provision or clause contained in the FAR, that provision or clause is preceded by the number 5 and is included under the same subsection number and caption as in the FAR. Provisions or clauses numbered in this manner represent: (1) Provisions or clauses which are "substantially" the same as FAR provisions or clauses, and (2) provisions and clauses which are to be used instead of FAR provisions. All supplemental provisions and clauses are numbered in the same manner as the FAR, except that the number is preceded by the chapter number and the subsection numbers begin with 70 and are sequentially numbered; e.g., 552.232-70, 552.232-71, etc.

(c) *Matrixes.* Matrixes are included as a guide to locating provisions and clauses which are applicable to supply, service, construction, and architect-engineer solicitations/contracts. A separate matrix lists provisions and clauses prescribed for use in connection with small purchases; other matrix are not applicable to small purchases. Matrixes listing FAR and GSAR provisions and clauses applicable to utility contracts (sole-supplier-regulated rates) and to leases of real property are also included. The absence of a GSAR entry in any given matrix does not mean that the clause cannot be used in other instances. Persons responsible for drafting solicitations must research pertinent regulations or make other determinations necessary to ensure that (1) the clauses selected fit the procurement, (2) there are no restrictions which preclude their use, and (3) when one clause is dependent upon the use of another clause, that all necessary clauses are included in the solicitation.

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 29403, July 19, 1985]

552.102 Incorporating provisions and clauses.

552.102-1 Incorporation by reference.

Provisions and clauses prescribed in the GSAR shall not be incorporated in solicitations/contracts by making a direct reference to a GSAR section. Unlike the FAR, copies of the GSAR (i.e., subscriptions to the loose-leaf issuances) are not available through the Government Printing Office for purchase by the general public. However, forms containing GSAR provisions and clauses in full text may be incorporated by reference if copies of the forms have been distributed to prospective offerors on GSA mailing lists.

552.103 Identification of provisions and clauses.

(a) When a provision or clause that is a deviation from a FAR provision or clause is prescribed in the GSAR, the word "(DEVIATION)" is included as a part of the title of the provision or clause along with the FAR citation. The Contracting Officer shall show the GSAR citation (552.232-8—Prompt Payment Discount (April 1984) (DEVIATION—FAR 52.232-8)) in solicitations and contracts.

(b) Provisions and clauses that deviate from FAR provisions and clauses, but which are not prescribed in the GSAR, shall be shown in solicitations/contracts in accordance with FAR 52.103(a).

(c) Provisions and clauses which deviate from GSAR provisions and clauses shall be shown in solicitations/contracts in accordance with FAR 52.103(b).

(d) When a "substantially the same as" provision or clause is used that varies from a FAR or GSAR clause, the word "(VARIATION)," the date of the variation, and the staff office/service/contracting activity and/or contracting office originating the variation, shall be included as a part of the title of the provision or clause, along with the FAR or GSAR citation. If there is more than one variation of a provision or clause, the variations are titled (VARIATION I), (VARIATION II), (VARIATION III) (552.232-70—PAYMENT DUE DATE (APR 1985)—(VARIATION I—OIRM (KESAO)). The contracting officer shall show the provision or clause citation in the solicitation or contract. Identification of variations of provisions or clauses which occur during negotiations is not required unless an amendment to the solicitation is issued.

(e) Variations of FAR or GSAR provisions or clauses should generally be used for individual cases. A copy of provision or clause variations developed for repeated use shall be furnished to the Office of GSA Acquisition Policy and Regulations (VP) for potential inclusion in the GSAR.

[49 FR 10868, Mar. 13, 1984, as amended at 50 FR 29403, July 19, 1985]

552.105 Procedures for using alternates.

The procedures set forth in FAR 52.105 are applicable with respect to this GSAR Part 552.

552.107 Provisions and clauses prescribed in Subpart 552.1.

(a) The contracting officer shall insert the provision at GSAR 552.252-5, Authorized Deviations or Variations in Provisions, in solicitations that include any FAR or GSAR provision with an authorized deviation or variation. This provision shall be used in lieu of the FAR provision at 52.252-5.

(b) The contracting officer shall insert the provision at GSAR 552.252-6, Authorized Deviations or Variations in Clauses, in solicitations and contracts that include any FAR or GSAR provision with an authorized deviation or variation. This clause shall be used in lieu of the FAR provision at 52.252-6.

[50 FR 29403, July 19, 1985]

Subpart 552.2—Text of Provisions and Clauses

552.200 Scope of subpart.

This subpart sets forth the text of all GSAR provisions and clauses, and for each provision and clause, provides a cross-reference to the location in the GSAR that prescribes its use. Brief instructions are given regarding the use of provisions and clauses, but these instructions may not be complete, and contractng officers must review the basic text where the clause is prescribed to determine requirements for use of the provision or clause.

552.203-70 Advertising of award.

As prescribed in 503.570, insert one of the following clauses in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation:

Alternate I

The following clause shall be included in all solicitations and contracts for supplies and services except those including the Experimental Technology Incentives program (ETIP) provisions:

ADVERTISING OF AWARD (APR 1984)

The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

(End of clause)

Alternate II

The following clause shall be included in solicitations and contracts when the Experimental Technology Incentive Program (ETIP) provisions are included:

ADVERTISING OF AWARD (JUN 1987)

The Contractor agrees not to refer to awards in commercial advertising in an inaccurate or misleading manner or in such a manner as to state or imply that the product or service is endorsed by the Federal Government. The Contractor may state that a contract was awarded pursuant to the Experimental Technology Incentive Program (ETIP) criteria provided that the information given is complete and accurate.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 52 FR 28827, Aug. 4, 1987]

552.207-70 Report of employment under commercial activities.

As prescribed in 507.305, insert the following clause:

REPORT OF EMPLOYMENT UNDER COMMERCIAL ACTIVITIES (APR 1984)

(a) The Contracting Officer, as soon as practicable, will provide the Contractor with a list of the Federal employees, including social security numbers, that will be involuntarily separated from Government employment as a result of this contract.

(b) The Contractor agrees:

(1) To provide the Contracting Officer, within 5 working days after the date of transfer of the operation and maintenance responsibilities of a Federal project to the Contractor (contract start date), with the names and social security numbers of individuals on the list referenced in paragraph (a) that, as of the contract start date, has accepted or rejected offers of employment comparable to their previous employment with the Federal Government. For those who reject the Contractor's employment offer, the Contractor shall include the total monetary value of the pay and benefits offered:

(2) To provide the Contracting Officer with the names and social security numbers of the individuals hired, within 5 working days of such hiring, during the first 90 days after the contract start date, if the Contractor hires any additional Federal employees on the list referenced in paragraph (a) for any job within the Contractor's organization; and

(3) To furnish the information required by this clause in a concise and clearly detailed format. (Report requirement approved by the Office of Management and Budget (OMB) under OMB control number 3090-0104.)

(c) The operation of the system of records identified by this clause is subject to the Privacy Act of 1974 (5 U.S.C. 552a) and the Privacy Act Notification and Clause of this contract. The clause constitutes the notice required to invoke compliance by the contractor with the provisions of the Notice and clause.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 52 FR 28827, Aug. 4, 1987]

552.207-71 Social Security (Except Medicare) and Thrift/Profit Sharing Plan Contributions.

As prescribed in section 507.305(b), insert the following provision:

SOCIAL SECURITY (EXCEPT MEDICARE) AND THRIFT/PROFIT SHARING PLAN CONTRIBUTIONS

(a) To provide for consistency of comparison between Government and Contractor costs, contributions to the Social Security Fund (except medicare) and any thrift/profit sharing plan costs included in the price submitted by the offeror selected to compare costs with the Government, may be deducted from that price for purposes of comparison with the Government's in-house bid.

(b) Offerors may provide, in the space provided in paragraph (h), the estimated contributions discussed above. The estimated contributions must be limited to those costs that would be allocable to a contract awarded under this solicitation for each year of the contract period, including option years.

(c) Estimated contributions to thrift/profit sharing plans to be deducted from the offeror's price shall be limited to the historical costs incurred by the offeror in the tax year previous to the solicitation date on a per employee basis. Thrift/profit sharing plans must be recognized by the Internal Revenue Service (IRS). Cost estimates that reflect improved plans will be accepted to the extent that the historical data justify the estimates used.

(d) For purposes of this provision, a thrift/profit sharing plan is defined as:

A deferred compensation arrangement in which an employee can contribute after-tax contributions to an individual account maintained in his/her behalf which may also receive matching employer contributions at some specified rate up to a maximum. A "thrift/profit sharing plan" includes a profit sharing plan as defined by 26 CFR 1.401-1(b)(1)(ii) and a stock bonus plan as defined by 26 CFR 1.401-1(b)(1)(iii). A thrift/profit sharing plan is not a "pension plan" as defined in 26 CFR 1.401-1(b)(1)(i).

(e) Upon the request of the Contracting Officer, the low responsive offeror selected to compare costs with the Government agrees to provide, within 5 working days of the request, all documentation necessary to verfiy the reasonableness of the social security and the thrift/profit sharing plan cost estimates submitted. Such documentation shall include, but is not limited to, the relevant pages of the corporate IRS submission for the tax year immediately prior to the date of the request, the number of contractor employees, the number of employees in the thrift/profit sharing plan, the number of employees included in the price offered and any labor hour worksheets used to develop the social security or thrift/profit sharing plan contributions submitted with the offer.

(f) Failure to submit the estimated contributions or to provide the requested documentation supportive of the estimated contributions will not make the offer nonresponsive. Such failure will, however, negate the offeror's opportunity to have such costs deducted in whole or in part from the price offered in the cost comparison with the Government's in-house bid.

(g) Disagreements between the offeror and the Contracting Officer over the validity of estimated social security or thrift/profit sharing plan contributions, which cannot be resolved by the offeror and the Contracting Officer, will be resolved through the General Services Administration A-76 Administrative Appeal Process, established under OMB Circular A-76 and Section 7.307, Chapter 1, Title 48, Code of Federal Regulations.

(h) Offeror social security and thrift/profit sharing plan contributions by year. The contributions indicated below will not be used in the Government's determination of either responsiveness or responsibility.

Year	Social Security contribution (excluding medicare)	Thrift/profit sharing plan contribution
1	$	$
2		
3		
4		
5		
Total		

(i) The successful commercial offer will be determined on the basis of the price offered and a determination that the low offer is responsive and the offeror responsible. The offer will then be compared with the Government bid, after the appropriate social security (except medicare) and thrift/profit sharing plan deductions have been made.

(End of provision)

[52 FR 8590, Mar. 19, 1987]

552.209-70 Subcontractor eligibility.

As prescribed in 509.104-4(c), insert the following clause in solicitations and contracts when a construction contract, or a contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limitation.

SUBCONTRACTOR ELIGIBILITY (APR 1984)

(a) In connection with the performance of work under this contract, the Contractor shall not subcontract with any subcontractor who, at the time of subcontract award, is listed on the current Consolidated List of Debarred, Suspended, and Ineligible Contractors, unless otherwise authorized by the Government in accordance with Subpart 9.4 of the Federal Acquisition Regulation.

(b) Prior to award of the prime contract, the Consolidated List of Debarred, Suspended, and Ineligible Contractors will be available for inspection at the Business Service Center in the GSA regional office. After contract award, the Contractor may obtain a copy of the current list from the Contracting Officer.

(c) In the event of the Contractor's noncompliance with the foregoing requirements, the Government may terminate this contract for default or take other appropriate action, including, but not limited to, requiring the Contractor to terminate any such subcontract and substitute an eligible subcontractor in lieu thereof, at no increase in the contract price or time for performance.

(d) The term "subcontractor," as used in this clause, shall mean the individual or firm with whom the Contractor proposes to enter into a subcontract for manufacturing, fabricating, installing, or otherwise performing work under this contract.

(e) The contract shall include the provisions of paragraphs (a), (b), (d), and (e) of this clause in every subcontract hereunder.

(End of clause)

552.209-71 Certification regarding previous crimes, debarments, suspensions, and defaults.

As prescribed in 509.105-70(a), insert the following certification in solicitations for supplies, services (except utility services), and leases of real property when the contract amount is expected to exceed the small purchase limitation.

(a) The offeror certifies that, within 3 years prior to the date of this offer, it and/or any of its officers and principal employees:

(1) Have ( ) have not ( ) been indicted, otherwise charged or convicted of:

(i) A criminal offense incident to obtaining or attempting to obtain a public (Federal, state, or municipal) or private contract or subcontract thereunder, or in the performance of such contract or subcontract;

(ii) A violation of the Organized Crime Control Act of 1970;

(iii) A violation of the Federal or State Antitrust statutes arising out of the submission of bids or proposals; or

(iv) Embezzlement, theft, forgery, bribery, falsification or destruction of records, fraud, tax fraud, receiving stolen property, or equivalent crimes which are indicative of a lack of business integrity.

(2) Have ( ) have not ( ) been debarred or suspended from the award of public contracts;

(3) Have ( ) have not ( ) had a public contract terminated for default.

(b) For the purpose of this certification, a principal employee is defined as the person(s) acting in a managerial or supervisory capacity who will be responsible for administering the offeror's performance of the contract to be awarded under this solicitation (e.g., project manager, plant manager).

(c) By submitting this certification, the offeror agrees to immediately notify the Contracting Officer, in writing, of any revision to the above certification based upon changed circumstances from the submission of its offer up to contract award, or for the duration of its offer.

(d) The knowledge of the person who executes this certification is not required to exceed the "knowledge" which that person reasonably can be expected to possess.

(e) A certification that any of the items in (a) above exist will not necessarily result in the withholding of an award under this solicitation. However, the certification will be considered in connection with the determination of an offeror's responsibility. Offerors who fail to furnish the certification and provide such additional information as requested by the Contracting Officer will not be responsible.

(f) The Government may utilize the remedy delineated in the Termination—Erroneous Representations Concerning Crimes, Debarments, Suspensions, and Defaults clause prescribed at 552.209-72 in addition to other remedies available to the Government, if the offeror furnishes an erroneous certification and contract award results from this solicitation.

(End of certification)

552.209-72 Termination—erroneous representation concerning crimes, debarments, suspensions, and defaults.

As prescribed in 509.105-70(e), insert the following clause in solicitations and contracts for supplies, services (except utility services), and leases of real property when the contract amount is expected to exceed the small purchase limitation.

TERMINATION—ERRONEOUS REPRESENTATION CONCERNING CRIMES, DEBARMENTS, SUSPENSIONS AND DEFAULTS (APR 1984)

The certification regarding previous crimes, debarments, suspensions, and defaults contained in the representation and certification provision of this solicitation is a material representation of fact upon which the Government relies when making award. If it is later determined that the certification was erroneous, in addition to other remedies available to the Government, the Government reserves the right to terminate for default any contract resulting from this solicitation.

(End of clause)

552.209-73 Product removal from qualified products list.

As prescribed in GSAR 509.206-2, insert one of the following clauses in solicitations and contracts when acquiring qualified products (use with FAR 52.209-1 and 52.209-2):

Alternate I

The following clause shall be included in the solicitation when security cabinets, security vault doors, and changeable combination padlocks qualify under applicable Federal or Interim Federal Specifications are to be procured:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (APR 1984)

If, during the performance of this contract, the product being furnished is, for any reason except those outlined in paragraph 3.1.1 of the applicable Federal or Interim Federal Specification, removed from the Qualified Products List, the Government may terminate this contract for default pursuant to paragraph (a)(1)(ii) of the Default clause prescribed in FAR 52-249-8.

(End of clause)

Alternate II

The following clause shall be included in the solicitation when other qualified products are to be procured:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (APR 1984)

If, during the performance of this contract, the product being furnished is for any reason removed from the Qualified Products List, the Government may terminate this contract for default pursuant to paragraph (a)(1)(ii) of the Default clause prescribed in FAR 52.249-8.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 1537, Jan. 11, 1985]

552.210-70 Standard references.

As prescribed in 510.011(a), insert the following clause in solicitations and contracts for construction when the contract amount is expected to exceed the small purchase limitation:

STANDARD REFERENCES (APR 1984)

(a) All documents and publications (such as, but limited to, manuals, handbooks, codes, standards and specifications) which are cited in this contract for the purpose of establishing requirements applicable to equipment, materials or workmanship under this contract, shall be deemed to be incorporated herein as fully as if printed and bound with the specifications of this contract, in accordance with the following:

(1) Wherever reference is made to Standard Specifications of the Public Buildings Service, Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, or Interim Amendments to Federal Standards, the Contractor shall comply with the requirements set out in the issue or edition identified in this contract.

(2) Wherever reference is made to any such document other than those specified in subparagraph (1) above, the Contractor shall comply with the requirements set out in the edition specified in this contract, or if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the solicitation on this project, except as modified by, as otherwise provided in, or as limited to type, class or grade, by the specifications of this contract.

(b) Federal Specifications, Federal Standards, Standard Specifications of the Public Buildings Service and Public Buildings Service Standard Methods of Test may be obtained from the Business Service Center at any GSA Regional Office. Inquiries regarding "Commercial Standards", "Product Standards" and "Simplified Practice Recommendations" should be addressed to the Standard Development Service Section, National Bureau of Standards, Washington, DC, 20234. Publications of Associations referred to in the specifications may be obtained directly from the Associations.

(c) Upon request the Contractor shall make available at the job site within a reasonable time, a copy of each trade manual and standard which is incorporated by reference in this contract and which governs quality and workmanship.

(End of clause)

552.210-71 Reference of specifications in drawings.

As prescribed in 510.011(b), insert the following clause in solicitations and contracts for supplies that cite or include Federal Specifications which contain drawings:

REFERENCES TO SPECIFICATIONS IN DRAWINGS (APR 1986)

If military or other drawings are made a part of this contract, any reference in the drawings to Federal Specifications or Standards will be considered to be a reference to the date of such Federal Specification or Standard identified in the contract. If the date of the Federal Specification or Standard is not identified in the contract, the edition, including revisions thereto, in effect on the date the solicitation is issued will apply.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 51 FR 23061, June 25, 1986]

552.210-72 Acceptable age of supplies.

As prescribed in GSAR 510.011(c), insert the following:

ACCEPTABLE AGE OF SUPPLIES (APR 1986)

The supplies furnished under this contract shall not be more than —— months old, beginning with the first full month after the date of manufacture marked on the container. For the purpose of this clause, supplies are considered to be furnished: (1) When they are offered to the Government for inspection and testing, or (2) on the date of shipment if shipment is authorized to be made without prior inspection by the Government. If the age of the supplies furnished under this contract is greater than the specified number of months, the Government may exercise its right to reject the supplies under paragraph (f) of FAR clause 52.246-2, Inspection of Supplies—Fixed Price.

(End of clause)

[51 FR 23062, June 25, 1986]

552.210-73 Age on delivery.

As prescribed in GSAR 510.011(c), insert the following clause:

AGE ON DELIVERY (APR 1986)

Included in the description of each shelf-life item is a statement regarding the "age on delivery." The age of the item(s) must not exceed the number of months shown in the item description, counted from the first day of the month after the month of manufacture to the date of delivery to the specified delivery point(s). If the age of the supplies delivered under this contract is greater than the number of months shown, the Government may exercise its right to reject the supplies under paragraph (f) of FAR clause 52.246-2, Inspection of Supplies—Fixed Price.

(End of clause)

[51 FR 23062, June 25, 1986]

552.210-74 Brand name or equal.

As prescribed in GSAR 510.011(e) insert the following clause:

BRAND NAME OR EQUAL (APR 1984)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the solicitation.

(c)(1) If the bidder proposed to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the solicitation, he/she shall (i) include in their bid a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 51 FR 23062, June 25, 1986]

552.210-75 Marking.

As prescribed in 510.011(f) insert the following clause in requirements-type solicitations/contracts under which deliveries may be made to civilian and military activities. Other clauses may be used in definite quantity contracts when much of the language is inappropriate (e.g., in contracts for motor vehicles), or when it is not desirable to include two "Marking" clauses in the solicitation/ contract.

MARKING (APR 1984)

(a) *General requirements.* Interior packages, if any, and exterior shipping containers shall be marked as specified elsewhere in the contract. Additional marking requirements may be specified on delivery orders issued under the contract. If not otherwise specified, interior packages and exterior shipping containers shall be marked in accordance with the following standards.

(1) *Deliveries to civilian activities.* Supplies shall be marked in accordance with Federal Standard 123, edition in effect on the date of issuance of the solicitation.

(2) *Deliveries to military activities.* Supplies shall be marked in accordance with Military Standard 129, edition in effect on the date of issuance of the solicitation.

(b) *Improperly marked material.* When Government inspection and acceptance are at destination, and delivered supplies are not marked in accordance with contract requirements, the Government has the right, without prior notice to the contractor, to perform the required marking, by contract or otherwise, and charge the contractor therefor at the rate specified elsewhere in this contract. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of clause)

552.210-76 Charges for marking.

As prescribed in §510.011(g), insert a clause substantially as follows in solicitations/contracts which include the clause in 552.210-75, or a similar clause which includes the substance of paragraph (b) of the clause in 552.210-75.

CHARGES FOR MARKING (APR 1984)

In accordance with paragraph (b) of clause 552.210-75 Marking, the Government will charge the contractor for marking or remarking improperly marked supplies at the rate of $——* Per man-hour or fraction thereof.

(End of clause)

*The rate to be inserted in the above clause shall be determined and published by the Assistant Administrator, Office of Federal Supply and Services, or his designee.

552.210-77 Preservation, packaging and packing.

As prescribed in 510.011(h), insert the following clause in solicitations and contracts for supplies when the contract amount is expected to exceed the small purchase limitation. The contracting officer may include the clause in contracts awarded through small purchase procedures when appropriate.

PRESERVATION, PACKAGING, AND PACKING (APR 1984)

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment) and each shipping container of each item in a shipment shall be of uniform size and content, except for residual quantities. Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering agency and the Contractor.

(End of clause)

552.210-78 Charges for packaging and packing.

As prescribed in 510.011(i), insert a clause substantially as follows:

CHARGES FOR PACKAGING AND PACKING (MAY 1988)

If supplies shipped to a GSA wholesale distribution center are not packaged and packed in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required repackaging/repacking, by contract or otherwise, and charge the Contractor therefor at the rate of $___*___ per man-hour or fraction thereof. The Contractor will also be charged for material costs, if incurred. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of clause)

*The rate to be inserted in the above clause shall be determined by the Commissioner, Federal Supply Service, or a designee.

[53 FR 30844, Aug. 16, 1988]

552.210-79 Packing list.

As prescribed in 510.011(j), insert the following clause:

PACKING LIST (APR 1984)

A packing list or other suitable shipping document shall accompany each shipment and shall show the (a) name and address of consignor, (b) the name and address of consignee, (c) Government purchase order number, (d) Government bill of lading number covering the shipment, if any, and (e) description of the material shipped, including item number, quantity, number of containers, and package number, if any.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 53 FR 30845, Aug. 16, 1988]

552.211-70 Commercial item certification.

As prescribed in 511.070-1, insert the following certification in solicitations for supplies when a basic or broad description of a standard commercially available product is used to describe the requirement.

COMMERCIAL ITEM CERTIFICATION (APR 1984)

By signing this offer, the offeror certifies that the product(s) offered meet the requirements of the CID and are the offeror's commercial or commercial-type product(s) as defined below.

(a) A commercial product is a product such as an item, material, component, subsystem, or system, (1) regularly used for other than Government purposes and (2) *sold* or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804-3 for explanation of terms).

(b) A *commercial-type* product is a commercial product that is modified or altered, without degrading the quality, appearance, or function of the commercial product, in compliance with the Government requirements and as such is usually sold only to the Government and not through the normal catalog or retail outlets, or (2) identified, packaged or marked differently than the commerical product normally sold to the general public.

(End of certification)

552.212-1 Time of delivery.

(a) As prescribed in 512.104(a) insert the following clause in single award schedule solications for supplies.

TIME OF DELIVERY (APR 1984)

The time of delivery for each item means the time required after receipt of an order (i) to make delivery to a destination in the case of delivered prices, (ii) to place shipment in transit in the case of f.o.b. origin prices.

Delivery is required to be made at the point(s) specified within — days after receipt of order.

(End of clause)

Alternate I

When it is appropriate to show different delivery times for different items or groups of items, the second paragraph of the basic clause above, should be revised to read: "Delivery is required to be made at the point(s) specified within the number of calendar days after receipt of order as indicated below." Appropriately captioned columns (completed by the solicitation preparer) should be inserted following the text of the clause.

(b) As prescribed in 512.104(a) insert the following clause in multiple award schedule solicitations for supplies.

TIME OF DELIVERY (APR 1984)

The Government desires that delivery be made at destination within the number of calendar days after receipt of order as set forth below. Offerors are requested to insert in the "Time of Deliver (days ARO)" column in the Schedule of Items a definite number of calendar days within which delivery will be made. *If the offeror does not insert a delivery time, he shall be deemed to offer delivery in accordance with the Government's stated desired delivery time.*

Items or groups of items (Special item numbers of nomenclature)	Desired delivery time (days ARO)

(End of clause)

Alternative I

As an alternative, the Government's listing of desired delivery times may be shown in a column titled "Desired Delivery Time (days ARO)" next to the column "Time of Delivery (days (ARO)" in the Schedule of Items. In this instance, the basic clause above, should be appropriately modified.

Alternate II

When the same desired delivery time applies to all items, the basic clause above, shall be modified by substituting the following as the first sentence of the clause: "The Government desires that delivery be made at destination within — calendar days after receipt of order." Also, the blank spaces and headings shall be omitted.

552.212-70 Time of shipment.

(a) As prescribed in 512.104(b), insert the following clause in solicitations and resultant stock replenishment contracts which do not include the Availability for Inspection and Testing, and Shipment/Delivery Clause at 552.212-72 and require shipment more than 45 calendar days after receipt of the order.

TIME OF SHIPMENT (APR 1984)

Shipment is required within — calendar days after receipt of order. Each delivery order issued under this contract will specify that shipment is required no later than the number of days shown above. If such order also states that "Early Shipment is Precluded," the Contractor agrees to make shipment no sooner than — calendar days after receipt of order. Earlier shipments may result in nonacceptance of the supplies at the delivery point at the time of arrival.

(End of clause)

(The second number to be inserted should be 15 calendar days less than the first number.)

(b) As prescribed in 512.104(b), insert the following clause in solicitations and resultant stock replenishment contracts which do not include the Availability for Inspection and Testing, and Shipment/Delivery Clause at 552.212-72 and require shipment within 45 calendar days or less after receipt of the order.

TIME OF SHIPMENT (APR 1984)

Shipment is required within — calendar days after receipt of order.

(End of clause)

552.212-71 Notice of shipment.

As prescribed in 512.104(c), insert the following clause in solicitations and contracts for supplies when it is in the Government's best interest to reserve the right to require a notice of shipment.

NOTICE OF SHIPMENT (APR 1984)

If specified in an order submitted under the contract, the Contractor shall, at the time each shipment is made on such order, furnish a notice of shipment to either the consignee or the ordering office or both, as specified. This requirement may be satisfied by completion and return to appropriate forms furnished by the ordering office of by the furnishing of copies of bills of lading, freight bills, packing lists, invoices, or similar documents in accordance with normal commercial practice if such document clearly identifies the order number, items and quantities shipped, date of shipment, point of origin, method of shipment and routing and the name of initial carrier.

(End of clause)

552.212-72 Availability for inspection and testing, and shipment/delivery.

(a) As prescribed in GSAR 512.104(d), insert the following clause in solicitations and contracts for stock items, other than circumstances of an unusual or compelling urgency, when lengthy testing is involved and the time required for completion of these tests cannot be predetermined.

AVAILABILITY FOR INSPECTION AND TESTING, AND SHIPMENT (SEPT 1986)

(a) The Government requires that the supplies listed herein be made available for inspection and testing within ____ calendar days after receipt of order, and be shipped within ____ calendar days after notice of approval and release by the appropriate Government inspection representative. If the point of inspection is changed to destination, or shipment is made under the Contractor Inspection Requirements clause, shipment is required within ____ days after receipt of order.

(b) If notice of approval and release by the appropriate Government inspection representative is received prior to —* calendar days after receipt of order, receipt of such notice shall be deemed to be on the —* calendar day after receipt of order. No shipment shall be made prior to the —* calendar day after receipt of order unless specifically authorized in writing by the Contracting Officer. Earlier shipments may result in rejection of the supplies at the delivery point at the time of arrival.

(c) If the Contractor fails to make the supplies available for inspection and testing within the number of days after receipt of order specified above, or fails to make shipment within the number of days after notice of approval and release by the Government inspection representative, the Contractor shall be deemed to have failed to make delivery within the purview of the default clause.

(End of clause)

• Entries are normally the same number of days specified for availability.

(b) As prescribed in 512.104(d), insert the following clause in definite quantity or requirement type contracts for supplies (other than stock items). Paragraph (c) of the clause shall only be included when the requirements are small and the proposed award is less than the dollar limitation established for source inspection.

AVAILABILITY FOR INSPECTION AND TESTING, AND DELIVERY• (SEPT 1986)

(a) The Government requires that the supplies listed herein be made available for inspection and testing within ____ calendar days after receipt of order, and be shipped within ____ calendar days after notice of approval and release by the appropriate Government inspection representative. If the point of inspection is changed to destination, or shipment is made under the Contractor Inspection Requirements clause, shipment is required within ____ • ____ days after receipt of order.

(b) If the contractor fails to make the supplies available for inspection and testing within the number of days after receipt of (notice of award) (order) specified above, or number of days after notice of approval and release by the Government inspection representative, the Contractor shall be deemed to have failed to make delivery within the purview of the default clause.

(c) In the event the point of inspection is changed to destination (delivery at) (shipment to) destination is required within — calendar days after receipt of (notice of award) (order).

(End of clause)

• When availability for shipment is to be used, substitute "SHIPMENT" for "DELIVERY".

•• Entry is normally the same number of days specified for availability.

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 10057, Mar. 13, 1985; 51 FR 45895, Dec. 23, 1986]

552.212-73 Parts and services.

As prescribed in 512.104(e), insert the following clause in solicitations and contracts whenever an AID requisition (P10/c, P10/t, PA/PR) specifies the need for assembling, servicing, and maintenance of equipment to be performed by the contractor.

PARTS AND SERVICES (APR 1984)

(a) For equipment under items listed in the schedule or services on which offers are submitted, the offeror certifies by submission of an offer that parts and service (including qualified mechanics) are now available from dealers or distributors serving the areas of ultimate overseas destination or that such facilities will be established. The offeror shall state in spaces provided below, the name and address of the nearest servicing facility and the value of spare parts for the equipment carried or to be carried in inventory. If parts and servicing facilities are not located, or to be located, in the city of ultimate destination the bidder shall indicate the distance in miles between point shown and indicated destination.

(b) Each Contractor will be fully responsible for the services to be performed by the named servicing facilities, or by such facilities to be established, and fully guarantees performance of such services if the orginal service proves unsatisfactory. If a new servicing facility is to be established the Contractor fully guarantees that such facility will be established no later than the date of arrival of the equipment at ultimate destination.

Item Number ____________________

____

____

Check one: New ____________________

Already Established ________________

Value of Spare Parts Inventory Carried for the Type of Equipment Specified: $——.

Number of Qualified Mechanics ——.

(End of clause)

552.212-74 Non-compliance with contract requirements.

As prescribed in 512.104(f), insert the following clause in solicitations and contracts for construction services when the contract amount is expected to exceed the small purchase limitation.

NON-COMPLIANCE WITH CONTRACT REQUIREMENTS (APR 1984)

In the event the Contractor, after receiving written notice from the Contracting Officer of non-compliance with any requirement of this contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the Contracting Officer shall have the right to order the Contractor to stop any or all work under the contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

(End of clause)

552.214-16 Minimum bid acceptance period.

(a) As prescribed in 514.270-1(a), insert the following provision:

MINIMUM BID ACCEPTANCE PERIOD (OCT 1985) (DEVIATION FAR 52.214-16)

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of ______* calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement. (*Insert any number equal to or greater than the minimum requirement stated in paragraph (c) of this provision. Failure to insert any number means the offeror accepts the minimum in paragraph (c)*).

The bidder allows the following *total* acceptance period: ______ calendar days.

(e) A bid allowing less than the government's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above, or (2) any longer acceptance period stated in paragraph (d) above, or (3) any extension of the offered acceptance period as may be subsequently agreed to by the bidder.

(End of provision)

*The contracting officer shall insert an appropriate number of days. See guidelines in 514.270-2(c).

[51 FR 45898, Dec. 23, 1986]

552.214-70—552.214-72 [Reserved]

552.214-73 "All or None" offers.

As prescribed in 514.201-6(c), insert the following provision:

"ALL OR NONE" OFFERS (APR 1984)

(a) Unless awards in the aggregate are specifically precluded in this solicitation, the Government reserves the right to evaluate offers and make awards on an "all or none" basis as provided below.

(b) An offer submitted on an "all or none" or similar basis will be evaluated as follows: The lowest acceptable offer exclusive of the "all or none" offer will be selected with respect to each item (or group of items when the solicitation provides for aggregate awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable "all or none" offer. Award will be made to result in the lowest total cost to the Government.

(End of provision)

Alternate I

When a requirements or indefinite quantity type contract is involved paragraph (b) of the basic provision shall be deleted and the following substituted.

"(b) An offer submitted on an "all or none" or similar basis will not be considered unless the offer is low on each item to which the "all or none" offer is made applicable. The term "each item" as used in this clause refers either to an item that under the terms of the solicitation may be independently awarded, or to a group of items on which an award is to be made in the aggregate."

[49 FR 10868, Mar. 22, 1984, as amended at 52 FR 6563, Mar. 4, 1987]

552.214-74 Solicitation copies.

As prescribed in 514-203-1(e), insert the following notices:

SOLICITATION COPIES (APR 1985)

To reduce costs, only a single copy of this solicitation is mailed to active bidders and to addressees on our bidder's mailing list. If additional copies are required (see Block 9, page 1, for number of bid copies to be submitted), you may reproduce them yourself, provided they are complete in every respect, or you may obtain them from the GSA Business Service Center, (*Insert address and phone number of the BSC serving the issuing office*).

(End of notice)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 10057, Mar. 13, 1985; 52 FR 6563, Mar. 4, 1987]

552.214-75 Progressive awards and monthly quantity allocations.

As prescribed in 514.201-7(a), insert the following provision:

PROGRESSIVE AWARDS AND MONTHLY QUANTITY ALLOCATIONS (APR 1984)

(a) *Monthly quantity allocation.* (1) Set forth below are the Government's estimated annual and monthly requirements for each stock item covered by this solicitation. In order to preclude the placement of orders with any Contractor in excess of production capacity, offerors are requested to indicate, in the spaces provided, the total quantity per month which they are willing to furnish of any item, or group of items, involving the use of the same production facilities. Since the number of items on which any offeror may be eligible for award cannot be determined in advance of bid opening, offerors are urged, in making monthly allocations, to group, for allocation purposes, as many items as possible. Such groupings will make it possible for the Government to make fullest use of the production capabilities of each offeror. (2) Offerors need not limit their monthly allocations to the Government's estimated monthly requirements, since additional unanticipated needs may occur during the period of the contract. If an offeror does not insert monthly allocation quantities, he will be deemed to offer to furnish all of the Government's requirements, even though they may exceed the stated estimated requirements.

National stock No.	Estimated annual requirements	Estimated monthly requirements

BIDDERS MONTHLY QUANTITY ALLOCATIONS

Items or groups of items	Monthly allocation quantity

(b) *Progressive awards.* If the low responsive offeror offers a monthly quantity allocation of less than the Government's estimated requirements, the Government may make progressive awards to the extent necessary to meet the estimated requirements. In such cases, awards will be made to the low responsive offeror, covering Government requirements up to that offeror's stated monthly quantity allocations, and then progressively to other offerors to the extent necessary.

(c) *Ordering procedures.* If progressive awards are made, orders will be placed first with the Contractor offering the lowest price on each item normally up to that Contractor's maximum quantity allocation and then, in the same manner, successively to other Contractors. However, to avoid the placement of unduly small orders or the splitting of a single requirement between two Contractors, the Government reserves the right to place orders with back-up Contractors whenever the orders placed with lower priced contracts equal or exceed 95 percent of their monthly quantity allocation for the item or group of items being ordered. In no case will orders be placed with any Contractor in excess of his monthly quantity allocation.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 10058, Mar. 13, 1985; 52 FR 6564, Mar. 4, 1987]

552.214-76 Bid sample requirements.

As prescribed in GSAR 514.202-4(a), a provision or clause shall be included in each solicitation showing detailed requirements regarding the submission of bid samples. This provision or clause is to be used in conjunction with the provision at FAR 52.214-20. The following clause is provided as an example:

BID SAMPLE REQUIREMENTS (APR 1985)

This clause supplements the provision of this solicitation entitled "Bid Samples." Samples submitted in accordance with this clause must be from the production of the manufacturer whose products will be supplied under resultant contracts.

(a) Two bid samples are required for each of the following items in this solicitation:

____

(b) Two representative samples shall be submitted for each of the following items upon which a bid is submitted:

Items	Acceptable representative samples

NOTE: (1) Bidders are not authorized to reapply samples being retained by GSA in connection with previous solicitations and/or resultant contracts.

(2) Bidders who propose to furnish an item or group of items from more than one manufacturer must submit two samples

from the production of each of those manufacturers.

(c) Samples will be evaluated to determine compliance with all characteristics listed below:

Subjective characteristics	Objective characteristics

(d) Samples shall be forwarded to the Sample Room at the address indicated below. Except for samples delivered by U.S. Mail, deliveries to the Sample Room will be received between the hours of — — Mondays through Fridays, official holidays excluded. Samples must be submitted with the original copy of the attached GSA Form 434 enclosed and properly executed.

CAUTION: Use proper address for method of shipment selected.

Mail and parcel post	Freight or express
(Insert Address of Bid Sample Room)	(Insert Address of Bid Sample Room)

(e) Samples applying to accepted bids will be retained during the term of the contract. If other bidders desire that the Government retain their samples for use on future procurements, or, that the Government return their samples, this may be signified by so stating on the Sample Record Sheet. Samples retained by the Government will not normally be inspected unless the bidder is in line for a contract award. Failure of the bidder to note disposition instructions on the Sample Record Sheet will be construed to mean that return of the samples is not desired. In such instances, the Government shall be relieved of all responsibility and may dispose of the samples as it deems most economical to the Government after the samples have served their purpose.

(End of clause)

[50 FR 10058, Mar. 13, 1985]

552.215-70 Examination of records by GSA.

As prescribed in GSAR 515.106-1 and 514.201-7(b), when awarding contracts (excluding small purchases), insert the following clause:

EXAMINATION OF RECORDS BY GSA (APR 1984)

The Contractor agrees that the Administrator of General Services or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Part 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier have access to and the right to examine any books, documents, papers, and records of such sub-Contractor, involving transactions related to the subcontract for compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding $10,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 2287, Jan. 16, 1985; 50 FR 10058, Mar. 13, 1985]

552.215-71—552.215-72 [Reserved]

552.215-73 Preparation of offers—construction.

As prescribed in 515.407(c), insert the following provision:

PREPARATION OF OFFERS—CONSTRUCTION (APR 1984) (DEVIATION FAR 52.215-13)

(a) Offers must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing an offer must initial each erasure or change appearing on any offer form.

(b) The offer form may require offerors to submit offer prices for one or more items on various bases, including—

(1) Lump sum offer;

(2) Alternative prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires an offer on all items, failure to do so will disqualify the offer. If an offer on all items is not required, offerors should insert the words "no offer" in the space provided for any item on which no price is submitted.

(d) Alternate offers will not be considered unless this solicitation authorizes their submission.

(End of provision)

[49 FR 10868, Mar. 22, 1984, as amended at 52 FR 6564, Mar. 4, 1987]

552.215-74 Contract award—negotiated—construction.

As prescribed in 515.407(d), insert the following provision:

Contract Award—Negotiated—Construction (Apr 1985) (Deviation FAR 52.215-16)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation, will be most advantageous to the Government, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The Government may (1) reject any or all offers if such action is in the public interest, (2) accept other than the lowest offer, and (3) waive informalities and minor irregularities in offers received.

(c) The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the offer.

(e) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part or an offer, as provided in paragraph (d) above), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Government.

(f) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract. However, if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.

(End of provision)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 10058, Mar. 13, 1985; 52 FR 6564, Mar. 4, 1987]

552.215-75 Data Universal Numbering System (DUNS).

As prescribed in 515.406-2, insert the following provision in all solicitations for supplies and services when the contract amount is expected to exceed the small purchase limitation.

Data Universal Numbering System (DUNS) (Apr 1984)

(a) The offeror shall insert the DUNS number applicable to the offeror's address entered on the Solicitation, Offer, and Award Form ——.

(b) If the offeror's production point (point of final assembly) is other than the location entered on the Solicitation, Offer, and Award Form, or if additional production points are involved, the offeror is requested to furnish the DUNS number applicable to each production point. Spaces for inserting these numbers are provided in the clause of this solicitation where offerors are to list production point addresses.

(c) If DUNS numbers have not been established for the addresses indicated in paragraphs (a) and (b) of these clauses, GSA will arrange for the assignment of these numbers after award of a contract, and will notify the Contractor accordingly.

(End of provision)

552.216-70 Fixed fee—construction.

As prescribed in 516.307, insert the following clause in cost-plus-fixed-fee construction contracts when the contractor's fee is negotiated on the basis of performance of specified portions of the work by the contractor and by subcontractors, respectively.

Fixed Fee—Construction (Apr 1984)

The provisions of the Fixed-Fee Construction clause prescribed by FAR 52.216-9 are supplemented as follows:

(a) At the time the contract was negotiated the Government and the Contractor contemplated that the following specific items of work would be subcontracted:

(List the items. Examples are: Electrical Work, Painting and Roofing and Sheet Metal.)

(b) The fixed fee payable hereunder was determined on this basis and on the further contemplation that it would be advantageous both to the Government and to the Contractor to have subcontracted in addition to the items specified above other portions of the work not predetermined in character but having a total estimated cost not exceeding $——. If the total cost of such other subcontracted portions of the work exceeds such amount, there shall be an equitable downward adjustment of the fixed fee.

(c) Nothing in this clause shall impair the right of the Contracting Officer to approve or disapprove the subcontracting of any portion of the work and the subcontracts therefor.

(End of clause)

552.216-71 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

As prescribed in GSAR 516.203-4(b), insert the following clause:

ECONOMIC PRICE ADJUSTMENT (OCT 1985)

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.

(b) Contractors may request price increases under the following conditions:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.

(2) Only three increases will be considered during the contract period.

(3) Increases are requested after the first 30 days of the contract period and prior to the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) The aggregate of the increases in any contract unit price under this clause shall not exceed —— * percent of the original contract unit price. The Government reserves the right to raise this ceiling where changes in market conditions during the contract period support an increase.

(d) The following material shall be submitted with the request for a price increase:

(1) A copy of the commercial catalog/pricelist showing the price increase and the effective date for commercial customers.

(2) Discount Schedule and Marketing Data regarding the Contractor's commercial pricing practice relating to the reissued or modified catalog/pricelist, or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.

(3) Documentation supporting the reasonableness of the price increase.

(e) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), and (d), above, are satisfied;

(2) Negotiate more favorable discounts from the new commercial prices when the total increase requested is not supported; or,

(3) Remove the product(s) from contract involved pursuant to the Cancellation Clause of this contract, when the increase requested is not supported.

(f) The contract modification reflecting the price adjustment shall be signed by the Government and made effective upon receipt of notification from the Contractor that the new catalog/pricelist have been mailed to the addressees previously furnished by the Contracting Officer, provided that in no event shall such price adjustment be effective prior to the effective date of the commercial price increases. The increased contract prices shall apply to the delivery orders issued to the Contractor on or after the effective date of the contract modification.

(End of clause)

* Insert the percent appropriate at the time the solicitation is issued. This percentage should normally be 10 percent, unless based on a trend established by an appropriate index such as the Producer Prices and Price Index during the most recent 6-month period indicates that a different percentage is more appropriate. Any ceiling other than 10 percent must be approved by the contracting director.

Alternate I (October 1985)

The following is substituted for paragraph (b), (b)(2), (b)(3), and (c) of the clause:

"(b) Contractors may request price increases after the first 12 months of the contract period providing all of the following conditions are met:

(1) * * *

(2) No more than three increases will be considered during each succeeding 12 month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of this subparagraph (b)).

(3) Increases are requested after the first 12 months of the contract period and prior to the last 60 days of the contract period.

(4) * * *

(c) In any contract period during which price increases will be considered (see subparagraph (b) above), the aggregate of the increases of any contract unit price shall be applied as described below:

(1) For contracts of 24 months (or less) duration, the aggregate of the increases

shall not exceed ——* percent of the original contract unit price.

(2) For contracts of more than 24 months duration, the aggregate of the increases in the second year shall not exceed ——* percent of the original contract unit price; the aggregate of the increases in the third year (or portion thereof) shall not exceed ——* percent of the contract unit price in effect at the end of the second year.

The Government reserves the right to raise or lower the ceiling when market conditions during the contract period support such a change."

(End of clause)

* Insert the percentage appropriate at the time the solicitation is issued. This percentage should normally be 10 percent, unless based on a trend established by an appropriate index such as the Producer Prices and Price Indexes during the most recent 6 month period which indicates that a different percentage is more appropriate. Any ceiling other than 10 percent shall be approved by the contracting director.

[50 FR 43715, Oct. 29, 1985]

552.219-1 Small Business Concern Representation.

As prescribed in 519.304(a), insert the following provision:

Small Business Concern Representation (Aug 1986) (Deviation FAR 52.219-1)

The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(End of provision)

[52 FR 16393, May 5, 1987]

552.219-70 Standard Industrial Classification Code and Small Business Size Standard.

(a) As prescribed in 519.304(b), insert the following provision when the same classification applies to all of the products or services being procured:

Standard Industrial Classification and Small Business Size Standard (Mar 1987)

The Standard Industrial Classification Code applicable to the supplies/services being procured is No. [1]———, and the applicable small business size standard is [2]———.

(End of provision)

(b) As prescribed in 519.304(b), insert the following provisions when different classification codes apply to the various products or services being procured:

Standard Industrial Classification and Small Business Size Standard (Mar 1987)

The Standard Industrial Classification (SIC) Codes and the small business size standards applicable to the items being procured are as follows:

Item Nos.

____

____

____

SIC Code

([1])

____

____

____

Small Business Size Standard

([2])

____

____

____

(End of provision)

[52 FR 16393, May 5, 1987]

552.219-71 Allocation of orders—partially set-aside items.

As prescribed in GSAR 519.502-3(b)(1), insert the following clause:

Allocation of Orders—Partially Set-Aside Items (June 1986)

Where the set-aside portion of an item or group of items is awarded to a Contractor other than the one receiving the award on the corresponding non-set-aside portion, the Government will divide the requirements to be ordered between the two Contractors with the objective of achieving, as nearly as possible, a 50/50 division of the total value of orders placed after the award of the set-aside portion. In no case will this division vary by more than a 60/40 division (with either the non-set-aside or set-aside Contractor receiving the larger portion) from the time of the award of the set-aside portion.

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[1] Insert the SIC Code for the supplies or services being procured. See FAR 19.102.

[2] Insert (for example) "500 employees," or "$2 million annual receipts," or a similar appropriate entry. See FAR 19.102.

(End of clause)

[51 FR 28816, Aug. 12, 1986]

552.222-43 Fair Labor Standards Act and Service Contract Act—price adjustment (multiyear and option contracts).

(a) As prescribed in GSAR 522.1006(b)(2), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (OPTION CONTRACT) (JUNE 1986)

(a) The Contractor warrants that the prices in this contract do not include an allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 (41 U.S.C. 351-358) by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current at the beginning of each renewal option period, shall apply to any renewal of this contract. When a determination does not apply to the renewal option period, the current Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) will apply to any renewal of this contract.

(c) The *_____ option price(s) will be adjusted upward or downward by the contracting officer, using the formula in paragraph (e) of this clause, when each option is exercised with the adjusted price to be effective beginning the first day of the option period. The Contracting Officer shall notify the Contractor of the adjusted price and incorporate, by contract modification, the most recent wage determination issued under the Service Contract Act of 1965.

(d) In determining the percentage of increase or decrease in labor costs, the wage determination being applied to the option period will be compared with the wage determination that applied during the initial contract period. If a wage determination is not issued for the initial contract period, but is issued for the option period, or if a wage determination is issued for the initial contract period, but not for the option period, the adjustment will be based on the increase or decrease in wages and fringe benefits that the Contractor must pay his employees, under the Fair Labor Standards Act versus the wage determination issued under the Service Contract Act.

(e) **_____ percent of the *_____ option price(s) will be adjusted upward or downward based on the percentage increase or decrease in the minimum hourly wages and fringe benefits to be paid ***_____ under this contract. The *_____ option price(s) will be adjusted using the formula contained herein, provided that the *_____ contract price(s) for the first option period as adjusted does not exceed the *_____ price(s) for the initial contract period by more than **** percent. If the *_____ prices after adjustment exceed the initial contract period by more than **** percent, the ceiling price (the *_____ price for the initial period increased by ****_____ percent) will be the contract price for the first option period. Similarly, the contract price(s) for the second option period as adjusted may not exceed the *_____ price(s) for the first option period by more than ****_____ percent. If the *_____ price(s) after adjustment exceed the contract price(s) for the first option period by more than **** percent, the ceiling price(s) (the *_____ prices for the first option period increased by ****_____ percent) will be the contract price(s) for the second option period.

(End of clause)

*The contracting officer should insert a description of the unit price, e.g., monthly, hourly, etc.

**The contracting officer should insert the percentage of the option price(s) to be adjusted. The percentage to be used is based on the portion of the total price that represents the labor and labor burden cost.

*** The contracting officer should insert the class of service employee listed in the wage determination that will perform most of the work required by the contract, e.g., janitor, guard, mechanic, etc.

**** The contracting officer should insert a percentage that reflects past increases of wage rates in the locality where services will be performed. For example, if increases over the past 3 years have been 5 percent, 7 percent, and 8 percent, the contracting officer should establish a ceiling of 10 percent. The ceiling is intended to force contractors to bargain with local unions to keep wage increases reasonable from year to year.

Alternate I (June 1986)

To adjust the option price for material as well as labor, the basic clause may be modified by deleting paragraph (e) and substituting the following as paragraph (e).

"(e) *_____ percent of the **_____ option prices(s) will be adjusted upward or downward based on the percentage increase or decrease in the minimum hourly wages and fringe benefits to be paid ***_____ under this contract. *_____ percent of the **_____ option price(s) will be adjusted upward or downward based upon the percentage increase or decrease in material cost reflected on the ***_____ published by the U.S. Department of Labor, Bureau of Labor Statistics. The material cost price adjustment for the first option period will be based on the increase or decrease in wholesale prices for ****_____ period beginning with the month in which the offers were submitted for the requirement. The price adjustment for the second option period will be based upon the increase or decrease in the wholesale prices for the ****_____ period beginning with the month in which the offers were submitted for the requirement. The **_____ option price(s) will be adjusted using the formula contained herein, provided that the total **_____ contract price(s) for the first option period as adjusted does not exceed the **_____ price(s) for the initial contract period by more than *****_____ percent. If the **_____ price(s) after adjustment exceed the initial period by more than *****_____ percent, the ceiling price(s) (the **_____ price(s) for the initial period increased by *****_____ percent) will be the contract price(s) for the first option period. Similarly, the contract price(s) for the second option period as adjusted may not exceed the **_____ price(s) for the first option period by more than *****_____ percent. If the **_____ price(s) after adjustment exceeds the contract price(s) for the first option period by more than *****_____ percent, the ceiling price(s) (the **_____ price for the first option period increased by *****_____ percent) will be the contract price(s) for the second option period."

(End of clause)

*The contracting officer should insert the percentage of the option price(s) to be adjusted. the percentages to be used are based on the portion of the total price that represents the labor cost (first blank) and the material costs (second blank).

**The contracting officer should insert a description of the unit price, e.g., monthly, hourly, etc.

***The contracting officer should insert the class of service employee listed in the wage determination in the first blank and the index that will be used to compute the adjustment for material cost increases, e.g., Wholesale Commodity Prices for General Purpose Machinery and Equipment, code 114, in the second blank.

****The contracting officer should insert the period of time to be used for computing the adjustment, e.g., 1 year, etc. The first blank will normally read "1 year," the second "2 years."

*****The contracting officer should insert a percentage that reflects the past increases for wages and materials.

(b) As prescribed in GSAR 522.1006(b)(2), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIYEAR CONTRACT) (JUNE 1986)

(a) The Contractor warrants that the prices in this contract do not include an allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The *_____ price(s) will be adjusted upward or downward before the end of the first year of the contract period, with the adjusted price to be effective beginning the first day of the thirteenth month. The *_____ price(s) will be adjusted again before the end of the second year of the contract period with the adjusted price(s) to be effective beginning the first day of the twenty-fifth month.

(c) The Contracting Officer shall notify the Contractor of the adjusted price(s) and incorporate, by contract modification, the most recent wage determination issued under the Service Contract Act of 1965 by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor (DOL). If a wage determination is not issued by the DOL, the Federal minimum wage established by Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 206) applies to this contract.

(d) In determining the percentage of the increase or decrease in labor cost, the wage determination being applied to the second or third year will be compared with the wage determination that applied to the first year. If a wage determination is not issued for the initial 12-month period but is issued for the second or third year period, or if a wage determination is issued for the initial contract period but not for the second or third period, the adjustment will be based on the increase or decrease in wages and fringe benefits that the contractor must pay the employees under the Fair Labor Standards Act versus the wage determination issued under the Service Contract Act.

(e) **_____ percent of the *_____ price(s) will be adjusted upward or downward based on the percentage increase or decrease in the minimum hourly wages and fringe benefits to be paid ***_____ in the locality where the contract work is to be performed as determined by the Administrator, U.S. Department of Labor, and stated on the Register of Wage Determinations and fringe benefits issued under the Service Contract Act of 1965 provided that the *_____ contract price(s) is not escalated more than ****_____ percent per year.

(End of clause)

*The contracting officer should insert a description of the unit price, e.g., monthly, hourly, etc.

**The contracting officer should insert the percentage of the contract price(s) to be adjusted. The percentage to be used is based on the portion of the total price that represents the labor and labor burden costs.

***The contracting officer should insert the class of service employee listed in the wage determination that is expected to perform most of the work required by the contract, e.g., elevator mechanic, maintenance mechanic, etc.

****The contracting officer should insert a percentage that reflects the past increases of wage rates in the locality where services will be performed. For example, if increases over the past 3 years have been 5 percent, 7 percent, and 8 percent, the contracting officer should establish a ceiling of 10 percent. The ceiling is intended to force contractors to bargain with local unions to keep wage increases reasonable from year to year.

Alternate I (June 1986)

To provide for adjusting the contract price for materials as well as labor, the basic clause may be modified by deleting paragraph (e) and substituting the following paragraph (e).

"(e) *_____ percent of the **_____ price(s) will be adjusted upward or downward based on the percentage increase or decrease in the minimum hourly wages and fringe benefits to be paid ***_____ under this contract and *_____ percent of the **_____ price will be adjusted upward or downward based upon the percentage increase or decrease in material cost reflected on the ***_____ published by the U.S. Department of Labor, Bureau of Labor Statistics, provided that the total **_____ contract price(s) is not escalated more than *****_____ percent per year. The first material price adjustment will be based on the increase or decrease in wholesale price for the ****_____ period beginning with the month in which the offers were submitted for the requirement. The second material price adjustment will be based upon the increase or decrease in the wholesale prices for the ****_____ period beginning with the month in which offers were submitted for the requirement."

*The contracting officer should insert the percentage of the contract price(s) to be adjusted. The percentages to be used are based on the portion of the total price that represents the labor costs (first blank) and the material costs (second blank).

**The contracting officer should insert a description of the unit price, e.g., monthly, hourly, etc.

***The contracting officer should insert the class of service employee listed in the wage determination in the first blank and the index that will be used to compute the adjustment for material cost increases, e.g., Wholesale Commodity Prices for General Purpose Machinery and Equipment, code 114, in the second blank.

****The contracting officer should insert the period of time to be used for computing the adjustment, e.g., 1 year, etc. The first blank will normally read "1 year" the second "2 years".

*****The contracting officer should insert a percentage that reflects past increases for wages and materials.

[51 FR 28816, Aug. 12, 1986]

552.222-70 Davis-Bacon Act (40 U.S.C 276a-276a-7).

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

DAVIS-BACON ACT (40 U.S.C. 276a-276a-7) (APR 1984)

(a) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the em ployer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator of the Wage and Hour Division, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator of the Wage and Hour Division, or an authorized representative will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30 day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (b)(2) or (b)(3) of this clause, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minumum wage rate prescribed in the contract for a class of laborers or mechanics included a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the Contractor, that applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB control number 1215-0141.)

(e) Paragraphs (a) through (d) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act, or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

(End of clause)

552.222-71 [Reserved]

552.222-72 Apprentices and trainees.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

APPRENTICES AND TRAINEES (APR 1984)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees:* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employee and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal Employment Opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of clause)

552.222-73 Payrolls and basic records.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

PAYROLLS AND BASIC RECORDS (APR 1984)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates or wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deduction made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls and a "Statement of Compliance" to the Contracting Officer if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls and "Statements of Compliance" to the applicant, sponsor, or owner, as the case may be, for transmission to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. The information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of the clause entitled "Payrolls and Basic Records" and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deduction as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

552.222-74 Compliance with Copeland Act requirements.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

COMPLIANCE WITH COPELAND ACT REQUIREMENTS (APR 1984)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(End of clause)

552.222-75 Withholding.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

WITHHOLDING (APR 1984)

The Contracting Officer shall upon his/her own action or written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

552.222-76 Subcontracts.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

SUBCONTRACTS (APR 1984)

The Contractor or subcontractor shall insert in any subcontracts the clause entitled "Davis-Bacon Act", "Contract Work Hours and Safety Standards Act—Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance With Copeland Act Requirements," "Withholding," "Subcontracts," "Contract Termination—Debarment," "Disputes Concerning Labor Standards," "Compliance with Davis-Bacon and Related Act Requirement," and "Certification of Eligibility," and such other clauses as the Contracting Officer may by appropriate instruction require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited above.

(End of clause)

552.222-77 Contract termination; debarment.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

CONTRACT TERMINATION; DEBARMENT (APR 1984)

A breach of the contract clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards-Act Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding," "Subcontracts," "Compliance With Davis-Bacon and Related Act Requirements," and "Certification of Eligibility" may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(End of clause)

552.222-78 Disputes concerning labor standards.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

DISPUTES CONCERNING LABOR STANDARDS (APR 1984)

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

552.222-79 Compliance with Davis-Bacon and Related Act requirements.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REQUIREMENTS (APR 1984)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(End of clause)

552.222-80 Certification of eligibility.

As prescribed in 522.403(a), the contracting officer shall insert the following clause:

CERTIFICATION OF ELIGIBILITY (APR 1984)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)

552.222-81 Applicable minimum hourly rates of wages.

As prescribed in 522.403(a) the contracting officer shall insert the following clause:

APPLICABLE MINIMUM HOURLY RATES OF WAGES (APR 1984)

(a) The wage determination decision of the Secretary of Labor in this contract specifies the minimum hourly rates of wages which shall be paid to laborers and mechanics employed or working upon the site of the work. These rates have been determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act, as amended, to be the prevailing rates for the corresponding classes of laborers and mechanics employed on contracts of a similar character in the locality where this work is to be performed. THESE MINIMUM HOURLY RATES OF WAGES SHALL APPLY ONLY IF THE CONTRACT IS IN EXCESS OF $2,000 IN AMOUNT.

(b) While the wage rates given in the decision are the minimum rates required to be paid during the life of the contract, it is the responsibility of bidders to inform themselves as to local labor conditions such as the prevailing wage rates, the length of the work day and work week, overtime compensation, fringe benefit payments, available labor supply, and prospective changes or adjustments of wage rates. The Contractor shall abide by and conform to all applicable laws, Executive Orders, and rules, regulations and orders of the Secretary of Labor. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed in the contract wage determination decision.

(c) The wage determination decision of the Secretary of Labor in the contract is solely for the purpose of setting forth the minimum hourly wage rates required to be paid during the life of the contract and is not to be accepted as a guarantee, warranty or representation as to the wage rates indicated.

(End of clause)

552.222-82 Preface for labor standards—state or political subdivision contracts.

As prescribed in 522.403(b), the contracting officer shall insert the following clause:

PREFACE FOR LABOR STANDARDS—STATE OR POLITICAL SUBDIVISION CONTRACTS (APR 1984)

The Contractor shall comply with the requirements of the Contract Work Hours Safety Standards Act and shall insert the following clauses in all subcontracts under this contract with private persons or firms.

(End of clause)

552.222-83 Labor standards clause for Federal service contracts not exceeding $2,500.

As prescribed in GSAR 522.1005, insert the following clause in solicitations and contracts when the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 is applicable. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

SERVICE CONTRACT ACT (MAY 1984)

Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of $2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

(End of clause)

[50 FR 24525, June 11, 1985]

§ 552.222-84 Service Contract Act of 1965 (as amended).

As prescribed in section 522.1006(a), insert the Service Contract Act of 1965 clause contained on the April 1984 edition of the GSA Form 2166, Service Contract Act of 1965 (as amended) in solicitations and contracts when the contract is subject to the Service Contract Act of 1965 and is (a) for over $2,500 or (b) for an indefinite dollar amount and the contracting officer expects the contract amount will exceed $2,500 during any 12-month period. The GSA Form 2166 may be used or its contents repeated verbatim in solicitations and contracts. With respect to blanket purchase agreements and basic ordering agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably expected to be placed in a 1-year period.

[51 FR 28817, Aug. 12, 1986]

552.222-85 Fair Labor Standards Act and Service Contract Act—price adjustment.

As prescribed in GSAR 522.1006(b)(3) insert the following clause:

Fair Labor Standards Act and Service Contract Act-Price Adjustment (May 1984)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with:

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(c) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (b) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(e) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

[50 FR 24525, June 11, 1985, as amended at 51 FR 28817, Aug. 12, 1986]

552.222-86 Fair Labor Standards Act and Service Contract Act—price adjustment (multiyear and option contracts).

As prescribed in GSAR 522.1006(b)(1) insert the following clause:

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts) (May 1984)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 (41 U.S.C. 351-358), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current at the beginning of each renewal option period, shall apply to any renewal of this contract. When no such determination has been made applicable to this contract, then the current Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) shall apply to any renewal of this contract.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with:

(1) The Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (c) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

[50 FR 24525, June 11, 1985; 50 FR 26764, June 28, 1985, as amended at 51 FR 28818, Aug. 12, 1986]

552.222-87 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

As prescribed in § 552.1308 insert the following clause:

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (MAR 1987)

(a) The Contractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100." Computer-generated forms are acceptable, provided that all required information and data are presented in the same format as the VETS-100 form.

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the Contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) above shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012. Nothing in this paragraph (e) shall preclude an employee from informing a Contractor at a future time of his or her desire to benefit from this program. Nothing in this paragraph (e) shall relieve a Contractor from liability for discrimination under 38 U.S.C. 2012.

(f) The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

EDITORIAL NOTE: The attachment, which contains the VETS-100 Form, is not published in the FEDERAL REGISTER or the Code of Federal Regulations. Forms may be obtained from OASVET (VET-100), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

[52 FR 12182, Apr. 15, 1987]

552.223-70 Hazardous substances.

As prescribed in 523.303, insert the following clause in solicitations and contracts for packaged items subject to the Federal Hazardous Substances Act and the Hazardous Materials Transportation Act.

HAZARDOUS SUBSTANCES (APR 1984)

(a) Federal Hazardous Substances Act—If the packaged items to be delivered under this contract are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, the contract shall be subject to the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261-1276), implementing regulations thereof (16 CFR Chapter II(c)), and Federal Standard No. 123, Marking for Shipment (Civil Agencies), issue in effect on the date of this solicitation.

(b) Hazardous Materials Transportation Act—If packaged items to be delivered under this contract shall be subject to the preparation of shipping documents, the preparation of items for transportation, shipping container construction, package making, package labeling, when required, shipper's certification of compliance, and transport vehicle placarding in accordance with Parts 171 through 178 of 49 CFR.

(c) Without exception, the minimum packaging acceptable for packaging Department of Transportation regulated hazardous materials shall be those prescribed in 49 CFR 173. However, packages which exceed the packaging requirements of the CFR are acceptable.

(End of clause)

552.223-71 Hazardous material information.

As prescribed in 523.370, insert the following clause in solicitations, including small purchases, which involve the shipment of hazardous materials on an f.o.b. origin basis.

HAZARDOUS MATERIAL INFORMATION (APR 1984)

Offeror shall indicate for each national stock number (NSN) the following information:

NSN	DOT shipping name	DOT hazard class	DOT label required
			Yes ☐ No ☐
			Yes ☐ No ☐
			Yes ☐ No ☐

(End of clause)

552.225-70 Buy American Act—hand or measuring tools.

As prescribed in GSAR 525.105-70(b), insert the following provision:

BUY AMERICAN ACT—HAND OR MEASURING TOOLS (DEC 1986)

Offers submitted in response to this solicitation offering domestic source end products will be evaluated against offers of other end products by adding a factor of 75 percent to the latter, exclusive of import duties. Each offer of a foreign source end product must state below or on an attachment to the offer the amount of duty included in each offered price. Failure to furnish duty information will result in use of the offered price (inclusive of any unspecified duty) of the item when adding the "Buy American" differential.

Item No.	Unit	(in dollars and cents)

(End of provision)

[52 FR 280, Jan. 5, 1987]

552.225-71 Notice of procurement restriction—hand or measuring tools.

As prescribed in GSAR 525.105-71(b), insert the following provision:

NOTICE OF PROCUREMENT RESTRICTION—HAND OR MEASURING TOOLS (DEC 1986)

(a) Awards under this solicitation will only be made to offerors that will furnish hand or measuring tools that are domestic end products. Pursuant to the requirements of the current Department of Defense Appropriations Act, GSA has determined, in accordance with section 6-104.4 of the Armed Services Procurement Regulation (6/15/70), that it is in the national interest to reject foreign products.

"Domestic end product," as used in this provision, means—

(1) Any hand or measuring tool, except for any electric or air-motor driven hand tool, wholly produced or manfactured, including all components, in the United States or its possessions; or,

(2) Any electric or air-motor driven hand tool if the cost of its components produced or manufactured in the United States exceeds 75 percent of the cost of all its components.

"Components," as used in this provision, means those articles, materials, and supplies incorporated directly into the hand or measuring tools.

(End of clause)

(b) Tool kits or sets, being procured under this solicitation, will not be considered domestic end products if any individual tool classified in FSC Group 51 or 52 and included in a tool kit or set is not a domestic end product as defined in paragraph (a) of this provision. The restrictions of this clause do not apply to individual hand or measuring tools that are contained in the tool kit or set but are not classified in FSC Group 51 or 52.

[52 FR 280, Jan. 5, 1987]

552.225-72 Offers must be for domestic source end products.

As prescribed in GSAR 5.105-72(c) insert the following provision:

OFFERS MUST BE FOR DOMESTIC SOURCE END PRODUCTS (DEC 1986)

In accordance with the current Appropriation Act for the Department of Defense, *award will be made for domestic source end products only.* Offers of foreign source end products will not be considered for award.

(End of provision)

[52 FR 280, Jan. 5, 1987]

552.225-73 Determination of nonavailability of domestic supplies.

As prescribed in GSAR 525.108-70(c), insert the following statement:

DETERMINATION OF NONAVAILABILITY OF DOMESTIC SUPPLIES (APR 1984)

For the purpose of the Buy American Act, the (insert the title of person making determination), General Services Administration, has determined that (insert item description) is not mined, produced, or manufactured at the present time in the United States in sufficient and reasonably available commercial quantities and of a statisfactory quality.

(End of statement)

[49 FR 10868, Mar. 22, 1984, as amended at 52 FR 280, Jan. 5, 1987]

552.225-74 Eligible products from non-designated countries—waiver.

As prescribed in GSAR 525.407, insert the following provision:

ELIGIBLE PRODUCTS FROM NON-DESIGNATED COUNTRIES—WAIVER (APR 1984)

In accordance with the Trade Agreements Act of 1979 and 48 CFR 25.402(b), no eligible product which originates in a nondesignated foreign country may be purchased by a Federal agency. However, this restriction may be waived prior to award when it is determined to be in the national interest. Accordingly, offers to furnish products originating in a nondesignated country may be submitted in response to this solicitation and shall be considered for award if a waiver is obtained from the U.S. Trade Representative or other designee (19 U.S.C. 2512) on the basis that:

(1) The Government's requirements, in whole or in part, can only be obtained from products originating in nondesignated countries;

(2) No responsive bid from a responsible source of supply is received offering products originating in the U.S. or originating in a designated country (48 CFR 52.225-8, 52.225-9). The determination to seek a waiver shall be in the sole discretion of the procurement activity, and the granting of the waiver shall be at the sole discretion of the U.S. Trade Representative or other designee (48 CFR 525.402).

(End of provision)

[49 FR 10868, Mar. 22, 1984, as amended at 52 FR 280, Jan. 5, 1987]

552.225-75 Buy American Act Notice—Construction Materials.

As prescribed in 525.205, insert the following provision in solicitations and contracts:

BUT AMERICAN ACT NOTICE—CONSTRUCTION MATERIALS (MAR 1988)

(a) The Buy American Act (41 U.S.C. 10) generally requires that only domestic construction material be used in the performance of this contract (See the clause entitled "Buy American Act—Construction Materials"). This requirement does not apply to the excepted construction material or components listed either below or in FAR 25.108:

(List applicable excepted materials not listed in FAR 25.108 or indicate "none.")

(b) Offers based on the use of other foreign construction material may be acceptable for award if the Government determines that—

(1) Comparable domestic construction material in sufficient and reasonably available quantities, of a satisfactory quality, is unavailable; or

(2) Use of comparable domestic construction material is impracticable or would unreasonably increase the cost of this contract.

(c) Any offer based on the use of one or more other foreign construction materials shall include current data, based on a reasonable canvass of suppliers, in the format listed in paragraph (h) below, clearly demonstrating that the cost of each foreign construction material, plus 6 percent, is less than the cost of each comparable domestic construction material. The cost of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate may be issued).

(d) For evaluation purposes, the Government will add to the offer, 6 percent of the cost of foreign construction material that qualifies for acceptance under paragraph (c) above.

(e) When offering foreign construction material, offerors may also offer, at stated prices, any available comparable domestic construction material, so as to avoid the possibility that failure of a foreign construction material to be acceptable, under (c) above, will cause rejection of the entire offer.

(f) If any foreign construction material does not qualify for acceptance under paragraph (c) above, the Government will evaluate the offer on the basis of the stated price for comparable domestic construction material, and the Offeror shall be required to furnish such domestic construction material at that price. Therefore, if the Offeror does not state a price for a comparable domestic construction material, and the foreign construction material does not qualify for acceptance under paragraph (c) above, the offer will be rejected in sealed bid procurements and may be rejected in negotiated procurements.

(g) If the foregoing procedure results in a tie between a foreign offer as evaluated and a domestic offer, award shall be made on the domestic offer. In such case, offers proposing to use any foreign construction material will be considered to be foreign offers.

(h) For evaluation purposes under paragraph (c) above, the following information and any applicable supporting data based on the canvass of suppliers shall be included in the offer for the use of one or more foreign construction materials:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS COST COMPARISON

Construction material description	Unit of measure	Quantity	Cost (dollars)
Item 1:			
Foreign construction material			$
Comparable domestic construction material			$
Item 2:			
Foreign construction material			$
Comparable domestic construction material			$

[1] Include all delivery costs to the construction site and an applicable duty

(End of provision)

[53 FR 9630, Mar. 24, 1988]

552.228-70 Bid guarantee and bonds.

As prescribed in 528.101-3(a) and 528.102-3, insert the following clause in solicitations and contracts when a construction contract or a contract for dismantling, demolition, or removal of improvements is contemplated and a bid guarantee and bonds are required:

BID GUARANTEE AND BONDS (APR 1984)

A bid guarantee is required as provided in Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair

(a) If the contract price is more than $25,000, the bidder shall furnish a performance bond in a penal amount of 100 percent of the contract price, and payment bond in a penal amount as follows:

(1) Fifty percent of the contract price if the contract price is more than $25,000 but not more than $1,000,000; or

(2) Forty percent of the contract price if the contract price is more than $1,000,000 but not more than $5,000,000; if the contract price is over $5,000,000, then forty per-

cent of the contract price or $2,500,000, whichever is less.

(b) If bids on one or more alternate and/or unit price bids were accepted in awarding the contract, contract price as used above shall mean the aggregate of the lump sum amount plus the product of each unit price accepted multiplied by the applicable number of units specified in the bid form, plus or minus such alternate bids as were accepted.

(c) Performance and payment bonds shall be submitted within the time specified on the Standard Form 1442, Solicitation, Offer, and Award, for this contract.

(d) The bidder shall not lose the right to receive any payment due or to become due under the contract unless and until the surety has made payment in settlement of claims by suppliers of labor or material in accordance with the requirements of the surety's undertaking under the payment or performance bond and has notified the Contracting Officer of the claims and amount so paid.

(End of clause)

552.228-71 Bid guarantee.

As prescribed in 528.101-3(b), insert a clause substantially as follows in solicitations and contracts when a building service contract or other service contract is contemplated and a bid guarantee is to be required:

BID GUARANTEE (APR 1984)

If the contract price is more than $25,000, bidders shall furnish a bid guarantee in a penal amount of —— percent of the bid price for the term of the contract (excluding options to extend the term of the contract, if any) or $3,000,000, whichever is less.

For bid guarantee purposes the amount of the bid shall be deemed to be the aggregate of each unit price bid multiplied by the applicable number of units shown on the bid form or in the method of award formula.

(End of clause)

552.228-72 Performance bond.

As prescribed in 528.103-2(d), insert a clause substantially as follows in solicitations and contracts when a building service contract or other service contract is contemplated and a performance bond is to be required:

PERFORMANCE BOND (APR 1985)

(a) The offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to — percent of the contract price for the term of the contract (excluding options to extend the term of the contract, if any) within 15 calendar days after receiving the written award (or acceptance of offer) and bonding forms. The period of time for furnishing the performance bond may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period.

(b) The performance bond shall be a firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 10058, Mar. 13, 1985]

552.228-73 Performance and payment bonds.

As prescribed in 528.103-3(c), insert a clause substantially as follows in solicitations and contracts when a building service or other service contract is contemplated and a performance bond and payment bond are to be required:

PERFORMANCE AND PAYMENT BONDS (APR 1985)

(a) The offeror to whom the award is made shall furnish a performance bond in an amount equal to — percent of the contract price and a payment bond in an amount equal to — percent of the contract price. As used herein the term "contract price" means the total amount of the contract for the term of the contract (excluding options to extend the term of the contract, if any). Bonds shall be provided within 15 calendar days after receiving the written award (or acceptance of offer) and bonding forms. The period of time for furnishing bonds may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period.

(b) The performance and payment bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or, in accordance with

Treasury Department regulations, certain bonds or notes of the United States.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 10058, Mar. 13, 1985]

552.228–74 Pledge of assets.

As prescribed in 528.202-71(a), insert a clause substantially the same as the following in solicitations and contracts that contain a requirement for a bid guarantee and performance bond or a performance and payment bonds.

PLEDGES OF ASSETS (APR 1984)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond or a payment bond (1) Pledges of Assets, and (2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety, in the amount of the penal sum of the bond, shall be in the form of:

(1) Evidence of an escrow account containing commercial and/or Government securities; and/or

(2) A recorded Covenant not to Convey or Encumber Real Estate. (At the Contracting Officer's discretion the offeror may be required to provide evidence of clear title by the conduct of a title search on each piece of pledged property.)

(End of clause)

552.228–75 Workmen's compensation laws.

As prescribed in 528.310(a), insert the following clause in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation and the contract will require work to be performed on Government property.

WORKMEN'S COMPENSATION LAWS (APR 1984)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several States to apply their workmen's compensation laws to all lands and premises owned or held by the United States.

(End of clause)

552.228–76 Insurance.

As prescribed in 528.310(b), insert the following clause in solicitations and contracts when the clause prescribed in FAR 52.228-5 is included and the contract amount is expected to exceed the small purchase limitation:

INSURANCE (APR 1984)

The requirements of the Insurance-Work on a Government Installation clause prescribed in FAR 52.228-5 are supplemented to provide that the general liability policy shall name "the United States of America, acting by and through the General Services Administration," as an additional insured with respect to operations performed under this contract.

(End of clause)

552.229–70 Federal, state, and local taxes.

As prescribed in 529.401-70, insert the following clause in solicitations and contracts when the procurement will be made under small purchase procedures:

FEDERAL, STATE, AND LOCAL TAXES (APR 1984

The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

(End of clause)

552.229–71 State and local taxes.

As prescribed in 529.401-71, insert the following clause in multiple award schedule solicitations and resultant contracts (including new item introductory schedules):

STATE AND LOCAL TAXES (APR 1984)

Notwithstanding the provisions of the clause entitled "Federal, State, and Local Taxes" (see FAR 29.401-1), the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Taxes excluded from the contract price pursuant to the preceding sentence shall be separately stated on the Contractor's invoices and the Government agrees either to pay to the Contractor amounts covering such taxes or to provide evidence necessary to sustain an exemption therefrom.

(End of clause)

552.229-72 Federal Excise Tax—D.C. Government.

As prescribed in 529.401-72, insert the following clause in solicitations and resultant contracts which may involve the purchase of supplies by the District of Columbia Government:

FEDERAL EXCISE TAX—DC GOVERNMENT (APR 1984)

The District of Columbia is exempt from and will not pay Federal excise taxes. Contractors will bill shipments to the District of Columbia at prices exclusive of such excise tax and show the amount of such tax on the invoice. The Internal Revenue Tax Exempt Certificate Number will be shown on all District of Columbia Government purchase orders.

(End of clause)

552.232-8 Discounts for prompt payments.

As prescribed in GSAR 532.111(a)(2), insert the following clause:

DISCOUNTS FOR EARLY (PROMPT) PAYMENT (APR 1984) (DEVIATION FAR 52.232-8)

(a) Discounts for early payment (hereinafter referred to as "discounts" or "the discount" will be considered in evaluating the relationship of the offeror's concessions to the Government vis-a-vis the offeror's concessions to its commercial customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low offeror in the situation described in the "Offers on Identical Products" provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the "value of funds" rate established by the Department of the Treasury and published quarterly in the FEDERAL REGISTER. The "value of funds" rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Agencies required to use the resultant schedule will not apply the discount in determining the lowest delivered price pursuant to the FPMR, 41 CFR 101-26.408, if the agency determines that payment will probably not be made within the discount period offered. The same is true if the discount is considered uneconomical at the time of placement of the order.

(e) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract, and discounts offered will be taken by the Government if payment is made within the discount period specified.

(f) Discounts that are included in offers become a part of the resulting contracts and are binding on the contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(g) The ending date of the discount period will be determined by applying the number of calendar days specified by the Contractor, from the later of:

(1) The date the supplies are deemed to be accepted by the Government, as determined in accordance with the payment terms of this contract, or

(2) The date a proper invoice or voucher is received in the office specified by the Government.

(h) The date of the check issued in payment, or the date of payment by wire transfer through the Treasury Financial Communications System, shall be considered to be the date payment is made.

(End of clause)

[51 FR 23062, June 25, 1986, as amended at 52 FR 47006, Dec. 11, 1987]

552.232-23 Assignment of claims.

As prescribed in GSAR 532.806, insert the following clause:

ASSIGNMENT OF CLAIMS (APR 1986)

Because this is a requirements or indefinite quantity contract under which more than one agency may place orders, paragraph (a) of the Assignment of Claims clause prescribed in FAR 52.232-23 is inapplicable and the following is substituted therefor:

In order to prevent confusion and delay in making payment, no claim(s) for all monies due or to become due under this contract, shall be assigned by the Contractor; but it shall be permissible for the Contractor to assign separately to a bank, trust company, or other financing institution, including any Federal lending agency, in accordance with the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), all monies due or to become due under any particular delivery order amounting to $1,000 or more issued by any Government activity or agency under this contract. Any such assignment shall be effective only if and when the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with the officer issuing the delivery order, in addition to complying with the filing requirements set forth in clause 4 of the provision in said Act, as amended. Notwithstanding any other provisions of this contract, payments to an assignee of any monies due or to become due under any delivery order assigned as provided herein, shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff.

(End of clause)

[51 FR 23062, June 25, 1986]

552.232-70 Payment due date.

(a) As prescribed in GSAR 532.111(b)(1), insert the following clause:

Payment Due Date (Apr 1986)

(a) Payments under this contract will be due on the ——* calendar day after the later of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date the supplies or services are accepted by the Government.

(b) The Government agrees to inspect and determine the acceptability of supplies delivered or services rendered within——** calendar days after the date of delivery of the supplies or completion of services rendered. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the above stated inspection period. However, the Contractor is not entitled to payment of contract amounts or interest unless and until actual acceptance by the Government occurs.

(c) If the supplies are rejected or services deficient, the provisions of paragraph (b) of this clause will apply to the date the Government receives replacement supplies or the date the contractor corrects the deficiencies in services.

(d) To be considered proper, a payment invoice must satisfy the requirements of the "Invoice Requirements" clause of this contract.

(e) For the purpose of determining the date of payment, payment shall be considered to be made the date the check is issued or the date payment by wire transfer is initiated through the Treasury Financial Communications System.

(End of clause)

*The contracting officer shall insert an appropriate number (30 days unless some other number of days is nesessary).

**The contracting officer shall insert a number which is the number of days necessary for inspection, acceptance, and other necessary actions. The number is usually 1 day for recurring building services and 5 days for supplies and other nonpersonal services unless some other number of days is justified in the contract file.

Alternate I (April 1986)

If the contract is for recurring building services expected to exceed the small purchase limitation, add paragraph (b) below to the basic clause and redesignate paragraphs (b), (c), (d), and (e) of the basic clause as paragraphs (c), (d), (e) and (f):

"(b) Final payment will be due on the ——* calendar day after the later of: (a)(1) or (2) above, or the actual date of receipt by the Contracting Officer of a release of all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release."

*The contracting officer shall insert 45 days unless some other number is justified in the contract file.

(b) As prescribed in GSAR 532.111(b)(2), insert the following clause:

Payment Due Date (Apr 1986)

(a) Payments under this contract, except as provided below, will be due on the ——* calendar day after the later of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date the property, other contract deliverables, or services are accepted by the Government.

(b) Progress payments will be due on the ——*** calendar day after the Contracting Officer receives a proper invoice/payment request, which will be payable in an amount approved by the Contracting Officer. If the Government agrees with the amount of the Contractor's payment request, payment will be based on that amount. If the Government does not agree with the amount of the Contractor's request, the Contracting Officer will try to reach agreement with the Contractor on an alternative amount. If timely agreement is not possible, the Contracting Officer will make payment based upon the Government estimate. The term "progress payments," as used here, means payments made as work progresses under the contract based upon costs incurred or the percentage or stage of completion. As used herein, this term does not include partial payments for partial deliveries accepted by the Government under this contract, or partial payments on contract termination claims.

(c) Final payment will be due on the ——* calendar day after the later of: (a)(1) or (2) above, or the actual date of receipt by the

Contracting Officer of a release of all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release.

(d) The Government agrees to inspect and determine the acceptability of contract deliverables or work completed within ——*** calendar days after the date of receipt of the deliverable or completion of work. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the above stated inspection period. However, the Contractor is not entitled to payment of contract amounts or interest unless and until actual acceptance by the Government occurs.

(e) If the property, other contract deliverables, or services are rejected, the provisions of paragraph (d) of this clause will apply to the date the Contractor corrects the defects in the property or services, or the date of actual receipt by the Government of corrected contract deliverables.

(f) To be considered proper, a payment invoice/payment request must satisfy the requirements of the "Invoice Requirements" clause of this contract.

(g) For the purpose of determining the date of payment, payment will be considered to be made the date the check is issued or the date payment by wire transfer is initiated through the Treasury Financial Communications System.

(End of clause)

*The contracting officer shall insert an appropriate number (30 days unless some other number of days is necessary).

**The contracting officer shall insert an appropriate number of days. The number should be the average time required to inspect the work, verify the payment request and process the payment. In establishing the number of days, the contracting officer should consider whether there will be GSA inspectors assigned to the project site. The number of days must not exceed 30 unless a longer period is justified in the file.

***The contracting officer shall insert a number which is the number of days necessary for inspection, acceptance, and other necessary actions. The number is usually 30 days unless some other number of days is justified in the contract file.

(c) As prescribed in GSAR 532.111(b)(3), insert the following clause:

PAYMENT DUE DATE (APR 1984)

The initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the lease or supplemental agreement establishing commencement of the lease term is executed, or the first workday of the month following the month in which the occupancy of space is effective, whichever is later. Subsequent rent shall be paid in arrears, and will be due on the first workday of each successive month, and only as provided for by the lease.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 51 FR 23063, June 25, 1986]

EFFECTIVE DATE NOTE: Section 552.232-70 was temporarily revised at 53 FR 7367, Mar. 8, 1988. The temporary regulation expires March 7, 1989. For the convenience of the user, the temporary regulation is set forth below.

552.232-70 Payments by electronic funds transfer.

As prescribed in 532.908(a), insert the following clause:

PAYMENTS BY ELECTRONIC FUNDS TRANSFER
(FEB 1988)

The requirement that the Contractor submit, no later than 14 days before an invoice or financing request, a designation of a financial institution for receipt of electronic fund transfer payments in paragraph (c) of the clause entitled "Prompt Payment" at FAR 52.232-25 (Alternate II) does not apply to this contract. Instead, the Contractor is directed to submit its designation of a financial institution for receipt of electronic funds transfer payments as a part of, or as an attachment to, each invoice requesting payment of $25,000 or more (exclusive of any discount for prompt payment) unless the invoice is submitted to the Department of Defense, the United States Postal Service, or the Tennessee Valley Authority. Information required for electronic funds transfer payments shall be furnished to the Veterans Administration in accordance with special instructions provided by that agency. Other agencies and departments thereof may waive the requirement for designation of a financial institution for receipt of electronic fund transfer payments and for submission of information required to make such payments by including a notice on delivery orders or otherwise notifying the Contractor.

(End of clause)

552.232-71 Interest on overdue payments.

As prescribed in GSAR 532.111(c), insert the following clause:

INTEREST ON OVERDUE PAYMENTS (APR 1984)

(a) The Prompt Payment Act, Public Law 97-177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract and requires the payment to Contractors of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

(End of clause)

Alternate I (April 1986)

If a construction, architect-engineer or other professional or technical service contract is involved, add the following paragraph (c) to the basic clause:

"(c) The Contractor shall not be entitled to interest penalties on progress payments and other payments made for financing purposes before receipt of complete delivered items of property or service, or on amounts withheld temporarily in accordance with the contract (e.g., retainage). The Government shall be liable for interest penalties on only the amount of payment past due that represents payment for complete delivered items of property or service accepted by the Government."

[51 FR 23064, June 25, 1986]

EFFECTIVE DATE NOTE: Section 552.232-71 was temporarily revised at 53 FR 7367, Mar. 8, 1988. The temporary regulation expires March 7, 1989. For the convenience of the user, the temporary regulation is set forth below.

552.232-71 Prompt payment.

As prescribed in 532.908(b) insert the following clause:

PROMPT PAYMENT (FEB 1988)

Notwithstanding any other payment clause in this contract, the Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made.

(a) *Payment due date.*

The initial monthy rental payment under this contract shall become due on the first workday of the month following the month in which the lease or supplemental agreement establishing commencement of the lease term is executed, or the first workday of the month following the month in which the occupancy of space is effective, whichever is later. Subsequent rent shall be paid in arrears, and will be due on the first workday of each successive month, and only as provided for by the lease.

(b) *Interest Penalty.*

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made within 15 days after the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in theFEDERAL REGISTER semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30 day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the Disputes clause or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the Disputes clause.

(End of clause)

Alternate I (February 1988)

If the lease contract will contain provisions for ordering alterations or overtime utility services, the text of paragraph (a) of the basic clause should be designated as subparagraph (1) and the following subparagraph (a)(2) and paragraph (b) should be added. Paragraph (b) of the basic clause should be redesignated (c).

(a) *Payment due date.*

(2) The due date for making payments for alterations or overtime utilities by the designated payment office shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after acceptance of the service.

(b) *Invoice and inspection requirements for alterations and overtime utilities.*

(1) An invoice shall be prepared and submitted to the designated billing office specified in the contract. A proper invoice must include the items listed in subparagraphs (b)(1) (i) through (vii) of this clause. If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 15 days after receipt of the invoice at the designated billing office.

Untimely notifications will be taken into account in the computation of any interest penalty owed the Contractor.

(i) Name and adddress of the Contractor.

(ii) Invoice date.

(iii) Lease number.

(iv) Order number or other authorization for delivery of services.

(v) Description, price, and quantity of property or services actually delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number and mailing address of person to be notified in the event of a defective invoice.

(2) The Government agrees to inspect and determine the acceptability of alterations performed or services rendered within 10 calendar days after the date of completion of alterations or performance of services unless a different period is specified for inspection at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the above stated inspection period. However, the Contractor is not entitled to payment of contract amounts or interest unless and until actual acceptance by the Government occurs.

(End of clause)

Alternate II (February 1988)

If payment may be made by electronic funds transfer, add the following paragraph (c) to the basic clause. When Alternate I is used this paragraph should be designated (d).

(c) *Electronic funds transfer.* Payments under this contract will be made by the Government either by check or electronic funds transfer (through the Treasury Financial Communications System (TFCS) or the Automated Clearing House (ACH), at the option of the Government. Not later than 14 calendar days after receipt of a notice of award or request from the Contracting Officer or other Government official, the Contractor shall provide information necessary for check payment and/or designate a financial institution for receipt of electronic funds transfer payments. The Contractor shall submit this information to the Contracting Officer or other Government official, as directed.

(1) For payment by check, the Contractor shall provide the full name (where practicable), title, phone number, and complete mailing address of the responsible official(s) to whom check payments are to be sent.

(2) For payment through TFCS, the Contractor shall provide the following information:

(i) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(ii) The American Bankers Association 9-digit identifying number of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(iii) Payee's account number at the financial institution where funds are to be transferred.

(iv) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains electronic funds transfer messages. Provide the telegraphic abbreviation and American Bankers Association identifying number used for TFCS).

(3) For payment through ACH, the Contractor shall provide the following information:

(i) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for TFCS).

(ii) Number of account to which funds are to be deposited.

(iii) Type of depositor account ("C" for checking, "S" for savings).

(iv) If the Contractor is a new enrollee to the ACH system, a "Payment Information Form," TFS 3881, must be completed before payment can be processed.

(4) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(5) The document furnishing the information required in this paragraph (c) must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(6) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amount otherwise properly due.

(End of clause)

552.232-72 Invoice requirements.

As prescribed in GSAR 532.111(d), insert a clause substantially as follows:

INVOICE REQUIREMENTS (DEC 1984)

(a) Invoicies shall be submitted in an original and—copies to the Government office designated in this contract or on the delivery order to receive invoices. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

(1) Name of the business concern and invoice date.

(2) Contract number.

(3) Delivery order number or other authorization for delivery of property or services.

(4) Item number, national stock number (NSN) or other product identification number, description, price, and quantity of property or services actually delivered or rendered.

(5) Shipping and payment terms.

(6) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent. The "remit to" address must correspond to the remittance address in the contract.

(7) [NOTE.—Continue listing other information or documentation necessary to effect payment under the contract. When the Method of Payment clause in GSAR 552.232-73(b) is used, insert a statement substantially as follows: "Information necessary to enable the Government to make payment by wire transfer shall be furnished in accordance with the Method of Payment clause of this contract."]

(b) To assist the Government in making timely payments, the Contractor is requested to furnish the following additional information either on the invoice or on an attachment to the invoice:

(List any such additional information)

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 1537, Jan. 11, 1985; 51 FR 23064, June 25, 1986]

EFFECTIVE DATE NOTE: Section 552.232-72 was temporarily removed at 53 FR 7368, Mar. 8, 1988. The temporary regulation expires March 7, 1989.

552.232-73 Method of payment.

(a) As prescribed in GSAR 532.111(e)(1), insert the following clause:

METHOD OF PAYMENT (APR 1984)

(a) Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) The Contractor shall forward the following information, in writing, to the Contracting Officer not later than 7 calendar days after receipt of notice of award.

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) (i) to whom check payments are to be sent, and (ii) who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified also provide:

(A) Address and telegraphic abbreviation of the correspondent financial institution.

(B) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this clause shall be furnished to the Contracting Officer, in writing, at least 30 calendar days before the effective date of the change. It is the Contractor's responsibility to furnish these changes 30 calendar days before submitting invoices to avoid invocies being returned as improper.

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number. (OMB Control Number 1510-0050).

(End of clause)

(b) As prescribed in GSAR 532.111(e)(2), insert the following clause:

METHOD OF PAYMENT (AUG 1984)

(a) *Payment options.* Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) *Information requirements to accomplish payment by wire transfer.* The Contractor shall include the following information on, or as an attachment to, each invoice showing an amount due of $25,000 or more (exclusive of discounts for early payment), except as provided in paragraph (c) of this clause. (OMB Control Number 1510-0050).

(1) Name, address, and telegraphic abbreviation of the receiving financial institution.

(2) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(3) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(4) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(i) Address and telegraphic abbreviation of the correspondent financial institution.

(ii) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

(c) *Exceptions.* The banking information specified in paragraph (b) of this clause is not required to be furnished to the Department of Defense, the United States Postal Service, or the Tennessee Valley Authority. Information furnished to the Veterans Administration shall be by special arrangement and in accordance with instructions received from that agency. Other agencies or departments thereof may waive the requirements of this clause by a notice on delivery orders, or by other means.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 1537, Jan. 11, 1985]

EFFECTIVE DATE NOTE: Section 552.232-73 was temporarily removed at 53 FR 7368, Mar. 8, 1988. The temporary regulation expires March 7, 1989.

552.232-74 Progress payments.

As prescribed in 532.502-3, insert the following provision in solicitations as a supplement to the notice prescribed in FAR 32.502-3 (a) or (b).

PROGRESS PAYMENTS (APR 1984)

If an offeror desires progress payments, he should make a written request that will accompany his offer and check the appropriate box below:

[ ] Progress payments are desired, but offer is not conditioned on receiving progress payments.

[ ] Offer is conditioned on receiving progress payments.

(NOTE.—1. If an offer is conditioned on the availability of progress payments and the offeror is found ineligible for such payments, the offer will be rejected.

2. Submission of an offer without requesting progress payments does not preclude the offeror from later requesting progress payments in accordance with applicable regulations, prior to or after award of the contract.)

(End of provision)

552.232-75 Payments to contractor.

As prescribed in 532.7003(a), insert the following clause in solicitations and contracts for construction, dismantling, demolition or removal of improvements when the contract amount is expected to exceed the small purchase limitation.

PAYMENTS TO CONTRACTOR (APR 1984)

The provisions of the Clause entitled "Payments Under Fixed-Price Construction Contracts" prescribed in FAR 52.232-5 are supplemented as follows:

(a) Before the first progress payment under this contract becomes due, the Contractor shall prepare a breakdown of the contract price acceptable to the Contracting Officer. The values in the breakdown will be used for determining progress payments. The Contractor's overhead and profit shall be prorated through the life of the contract.

(b) Preparatory work done (including shop drawings) will not be taken into consideration in preparing estimates upon which progress payments are based.

(c) Unless otherwise provided in the specifications, material delivered that will be incorporated into the structure will be taken into consideration in computing progress payments, provided the material is delivered on the site, or is delivered to the Contractor and properly stored by him in a warehouse, storage yard or similar suitable place as may be approved by the Contracting Officer. Before each such payment is made for delivered material stored on the site, the Contractor shall furnish to the Contracting Officer such evidence as he may require as proof of the quantity and value of such materials. Before each such payment is made for delivered material stored off the site, the Contractor shall furnish the Contracting Officer properly executed bills of sale for the delivered material upon which payment is being made. The Contractor shall remain responsible for such stored materials.

(d) Estimates on which progress payments are based shall include the value (as determined by the Contracting Officer) of satisfactory inplace work performed pursuant to a change order as to which final agreement on the equitable price adjustment has not been reached, provided, however, that (except in an unusual case where a unilateral determination cannot be made, as provided in paragraph (a)(6) of the Equitable Adjustments Clause) no further progress payments shall be made under the provisions of this paragraph after the work is 50% completed as determined by the Contracting Officer.

(End of clause)

552.232-76 Certification of payment.

As prescribed in 532.7003(b), the contracting officer shall insert the following clause in solicitations and contracts for construction, dismantling, demolition, or removal of improvements unless the procurement will be made under small purchase procedures. The clause may be used on an optional basis in small purchases.

CERTIFICATION OF PAYMENT (APR 1984)

The Contractor, prior to receiving a progress or final payment under this contract, shall submit to the Contracting Officer a certification that the Contractor has made payment from proceeds of prior payments, or that he will make timely payment from the proceeds of the progress or final payment then due him, to his subcontractors and suppliers in accordance with his contractual arrangements with them.

(End of clause)

552.232-77 Availability of funds.

As prescribed in GSAR 532.705-1, insert the following clause:

AVAILABILITY OF FUNDS (JULY 1984)

The authorization of performance of work under this contract during the initial contract period and any option or extension period(s) is contingent upon the appropriation of funds to procure this service. If the contract is awarded, extended, or option(s) exercised, the Government's obligation beyond the end of the fiscal year (September 30), in which the award or extension is made or option(s) exercised, is contingent upon the availability of funds from which payment for the contract services can be made. No legal liability on the part of the Government for payment of any money beyond the end of each fiscal year (September 30) shall arise unless or until funds are made available to the Contracting Officer for this procurement and written notice of such availability is given to the Contractor.

(End of clause)

[50 FR 1537, Jan. 11, 1985]

552.232-78 Adjusting payments.

As prescribed in 532.111(f), insert the following clause:

ADJUSTING PAYMENTS (APR 1986)

(a) Under the Inspection of Services clause of this contract, payments may be adjusted if any services do not conform with contract requirements. The Contracting Officer or a designated representative will inform the Contractor, in writing, of the type and dollar amount of proposed deductions by the 10th workday of the month following the performance period for which the deductions are to be made.

(b) The Contractor may, within 10 working days of receipt of the notification of the proposed deductions, present to the Contracting Officer specific reasons why any or all of the proposed deductions are not justified. Reasons must be solidly based and must provide specific facts that justify reconsideration and/or adjustment of the amount to be deducted. Failure to respond within the 10 day period will be interpreted to mean that the Contractor accepts the deductions proposed.

(c) Payments (except for the final payment) will not be delayed or withheld until disputes over proposed deductions are settled. If the Contracting Officer determines that any or all of the proposed deductions are warranted, the Contracting Officer shall so notify the Contractor, and adjust subsequent payments under the contract accordingly.

(End of clause)

[51 FR 23064, June 25, 1986]

552.232-79 Final payments.

As prescribed in 532.111(g), insert the following clause:

FINAL PAYMENT (APR 1986)

Before final payment is made, the Contractor shall furnish the Contracting Officer with a release of all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), a release may also be required of the assignee.

(End of clause)

[51 FR 23065, June 25, 1986]

552.233-2 Service of protest.

As prescribed in GSAR 533.106, insert the following provision:

Service of Protest (May 1985) (Deviation FAR 52.233-2)

A copy of any protest, as defined in FAR 33.101, that is filed within the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA), shall be served on the Contracting Officer, ————* and the Assistant General Counsel ————**. The copy of any such protest must be received in the offices designated above on the same day a protest is filed with the GSBCA, or within one day of filing a protest with the GAO.

(End of provision)

*Insert the address of Contracting Officer or refer to the number of the block on the Standard Form 33 or 1442, etc., where the address of the Contracting Office is identified.

**Insert the full title and address of the appropriate Assistant General Counsel. (See 533.102(b).)

[50 FR 24777, June 13, 1985]

552.233-70 Disputes (utility contract).

As prescribed in GSAR 533.214, insert the following clause:

Disputes (Utility Contract) (Apr 1984)

The requirements of the Disputes clause at FAR 52.233-1 are supplemental to provide that matters involving the interpretation of retail rates, rate schedules, tariffs, riders, and tariff related terms provided under this contract and conditions of service are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 24777, June 13, 1985]

552.236-70 Definitions.

As prescribed in GSAR 536.570-1, insert the following:

Definitions (Apr 1984)

The terms "Administration" and "Service" as used in this contract shall mean the General Services Administration (GSA) and the Public Buildings Service (PBS), respectively.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 24777, June 13, 1985]

552.236-71 Authorities and limitations.

As prescribed in GSAR 536.570-2, insert the following:

Authorities and Limitations (Apr 1984)

(a) All work shall be performed under the general direction of the Contracting Officer, who alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents, except that he shall have the right to designate authorized representatives to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector or Custodian) or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such authorized representatives additional power and authority to act for him or designate additional representatives, specifying the extent of their authority to act for him; a copy of each document vesting additional authority in an authorized representative or designating an additional authorized representative shall be furnished to the Contractor.

(b) The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation or determination) issued by an authorized representative in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation or determination) of anyone not authorized to issue such order.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 24777, June 13, 1985]

552.236-72 Specialist.

As prescribed in GSAR 536.570-3, insert the following clause:

Specialist (Apr 1984)

The term "Specialist" as used in the contract specification shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 24777, June 13, 1985]

552.236-73 Basis of award—construction contract.

As prescribed in GSAR 536.570-4, insert the following provision or the appropriate Alternate:

BASIS OF AWARD—CONSTRUCTION CONTRACT (APR 1985)

(a) The low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form). See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled "Contract Award—Sealed Bidding."

(b) A bid may be rejected as nonresponsive if the bid is materially unbalanced as to bid prices. A bid is unbalanced when the bid is based on prices significantly less than cost for some work and significantly overstated for other work.

(End of provision)

Alternate I

If the solicitation includes a base bid and options, the Contracting Officer shall delete paragraph (a) of the basic clause and insert paragraph (a) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options. See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled "Contract Award—Sealed Bidding."

Alternate II

If the solicitation includes a base bid and alternates, the Contracting Officer shall delete paragraph (a) of the basic clause and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening. See the provision entitled "Contact Award—Sealed Bidding."

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, and Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates does not exceed the funds available at bid opening. For example, when the amount available in $100,000 and a bidder's base bid is $85,000, with its separate bids on four successive alternates being $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of selecting the alternates would be $99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the $100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), an award may be made to that low bidder on the base bid, plus any combination of alternates for which funds are available at the time of award, but only if the award amount does not exceed the amount offered by any other responsible bidder. If the base bid plus the proposed combination of alternates exceeds the amount offered by any other responsible bidder for the same combination of alternates, the award cannot be made on that combination of alternates.

Alternate III

If the solicitation includes a base bid, alternates, and options, the Contracting Officer shall delete paragraph (a) of the basic clause and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening plus (3) all options designated to be evaluated except those options associated with alternates which are skipped during the selection process outlined in paragraph (c) below. The evaluation of options will not obligate the Government to exercise the options. See the provision entitled "Contract Award—Sealed Bidding."

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, or Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates does not exceed the funds available at bid opening. For example, when the amount available is $100,000 and a bidder's base bid is $85,000, with its separate bids on four successive alternates being $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of selecting the alternates would be $99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the $100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), award may be made to that low bidder on the base bid and evaluated options plus any combination of alternates for which funds are available at the time of award, but only if that low bidder is still low on the sum thereof plus any previously unevaluated options designated to be evaluated which are associated with proposed alternates that were skipped during the selection uder paragraph (c). If that low bidder is not still low, award cannot be made on the proposed combination of alternates.

[50 FR 1538, Jan. 11, 1985, as amended at 50 FR 10058, Mar. 13, 1985; 50 FR 50170, Dec. 9, 1985]

552.236-74 Working hours.

As prescribed in 536.570-5, insert the following clause in solicitations and contracts for construction, or dismantling, demolition or removal of improvements:

WORKING HOURS (APR 1984)

(a) It is contemplated that all work will be performed during the customary working hours of the trades involved unless otherwise specified in this contract. Work performed by the Contractor at his own volition outside such customary working hours shall be at no additional expense to the Government.

(b) Any requests received by the Contractor from occupants of existing buildings to change the hours of work shall be referred to the Contracting Officer for determination.

(End of clause)

552.236-75 Use of premises.

As prescribed in 536.570-6, insert the following clause in solicitations and contracts for construction, or dismantling, demolition or removal of improvements.

USE OF PREMISES (APR 1984)

(a) If the premises are occupied, the Contractor, his subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the premises and shall perform the work required under this contract in such a manner as not to unreasonably interrupt or interfere with the conduct of Government business.

(b) Any request received by the Contractor from occupants of existing buildings to change the sequence of work shall be referred to the Contracting Officer for determination.

(c) If the premises are occupied, the Contractor, his subcontractors and their employees shall not have access to or be admitted into any building outside the scope of this contract except with official permission.

552.236-76 Measurements.

As prescribed in 536.570-7, insert the following clause in contracts for construction, dismantling, demolition or removal of improvements.

MEASUREMENTS (APR 1984)

All dimensions shown of existing work and all dimensions required for work that is to connect with work now in place, shall be verified by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to the Contracting Officer before any work affected thereby has been performed.

(End of clause)

552.236-77 Specifications and drawings.

As prescribed in 536.570-8, insert the following clause in contracts for construction, or dismantling, demolition, or removal of improvements which are expected to exceed the small purchase limitation.

SPECIFICATIONS AND DRAWINGS (APR 1984)

The requirements of the clause entitled "Specifications and Drawings" at FAR 52.236-21, are supplemented as follows:

(a) In case of difference between small and large-scale drawings, the large-scale drawings shall govern. Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing On any of the drawings where a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out shall apply also to all other like portions of the work.

(b) Where the word "similar" occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

(c) Standard Details or Specification Drawings are applicable when listed, bound with the specifications, noted on the drawings or referenced elsewhere in the specifications. Where the notes on the drawings indicate modifications, such modifications shall govern.

(d) In case of difference between Standard Details or Specification Drawings and the specifications, the specifications will govern. In case of difference between the Standard Details or Specification Drawings and the drawings prepared specifically for this contract, the later shall govern.

(End of clause)

552.236-78 Shop drawings, coordination drawings, and schedules.

As prescribed in 536.570-9, insert the following clause in contracts for construction, or dismantling, demolition, or removal of improvements which are expected to exceed the small purchase limitation.

SHOP DRAWINGS, COORDINATION DRAWINGS, AND SCHEDULES (APR 1984)

The requirements, of the clause entitled "Specifications and Drawings" at FAR 52.236-21, are supplemented as follows:

(a) The Contractor shall submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Contracting Officer as follows:

(b) Shop drawings shall include fabrication, erection and setting drawings, schedule drawings, manufacturers' scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature and performance and test data.

(c) Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be submitted in reproducible form with two prints made by a process approved by the Contracting Officer. Upon approval, the reproducible form will be returned to the Contractor who shall then furnish the number of additional prints, not to exceed 10, required by the specifications. The Contractor shall submit shop drawings in catalog, pamphlet and similar printed form in a minimum of four copies plus as many additional copies as the Contractor may desire or need for his use or use by subcontractors.

(d) Before submitting shop drawings on the mechanical and electrical work, the Contractor shall submit and obtain the Contracting Officer's approval of such lists of mechanical and electrical equipment and materials as may be required by the specifications.

(e) Each shop drawing or coordination drawing shall have a blank area 5 by 5 inches, located adjacent to the title block. The title block shall display the following:

Number and title of drawing
Date of drawing or revision
Name of project building or facility
Name of contractor and (if appropriate) name of subcontractor submitting drawing
Clear identity of contents and location on the work
Project title and contract number

(f) Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, shop drawings, coordination drawings and schedules shall be submitted to the Contracting Officer, with a letter in triplicate, sufficiently in advance of construction requirements to permit no less than 10 working days for checking and appropriate action.

(g) Approval of drawings and schedules will be general and shall not be construed as permitting any departure from the contract requirements, or as approving departures from full-size details furnished by the Contracting Officer.

(End of clause)

552.236-79 Samples.

As prescribed in 536.570-10, insert the following clause in contracts for construction which are expected to exceed the small purchase limitation.

Samples (Apr 1984)

(a) After the award of the contract, the Contractor shall furnish for the approval of the Contracting Officer samples required by the specifications or by the Contracting Officer. Samples shall be delivered to the Contracting Officer or to the Architect as specified or as directed. The Contractor shall prepay all shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work until approved in writing by the Contracting Officer.

(b) Each sample shall have a label indicating:

(i) Name of project building or facility, project title and contract number.

(ii) Name of Contractor and, if appropriate, name of subcontractor.

(iii) Identification of material or equipment with specification requirement.

(iv) Place of origin.

(v) Name of producer and brand (if any).

Samples of finished materials shall have additional markings that will identify them under the finish schedules.

(c) The Contractor shall mail under separate cover a letter in triplicate submitting each shipment of samples and containing the information required in paragraph (b) above. He shall enclose a copy of this letter with the shipment and send a copy to the Government representative of the project. Approval of a sample shall be only for the characteristics or use name in such approval and shall not be construed to change or modify any contract requirement. Substitutions will not be permitted unless they are approved in writing by the Contracting Officer.

(d) Approved samples not destroyed in testing will be sent to the Government representative at the project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment, incorporated in the work shall match the approved samples. Other samples not destroyed in testing or not approved will be returned to the Contractor at his expense if so requested at time of submission.

(e) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material or equipment which previously has proved unsatisfactory in service.

(f) Samples of various materials or equipment delivered on the site or in place may be taken by the Government representative for testing. Samples failing to meet contract requirements will automatically void previous approvals of the items tested. The Contractor shall replace such materials or equipment found out to have met contract requirements, or there shall be a proper adjustment of the contract price as determined by the Contracting Officer.

(g) Unless otherwise specified, when tests are required only one test of each sample proposed for use will be made at the expense of the Government. Samples which do not meet specification requirements will be rejected. Testing of additional samples will be made by the Government at the expense of the Contractor.

(End of clause)

552.236-80 Heat.

As prescribed in 536.570-11, insert the following clause in solicitations and contracts for construction or dismantling, demolition, or removal of improvements.

Heat (Apr 1984)

Unless otherwise specified or unless already provided by the Government the Contractor shall:

(a) Provide heat, as necessary to protect all work, materials, and equipment against injury from dampness and cold;

(b) Protect, cover and/or heat as may be necessary, to produce and maintain a temperature of not less than 50 degrees Fahrenheit (1) in the concrete during the placing, setting and curing of concrete, and (2) in the plaster during the application, setting and curing of plaster; and

(c) Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material, but in no case less than 50 degrees Fahrenheit, for a period beginning 10 days before placing of interior finishes and finish materials and continuing until completion or beneficial occupancy of the area, whichever is earlier.

(End of clause)

552.236-81 Use of equipment by the government.

As prescribed in 536.570-12, insert the following clause in solicitations and contracts for construction, or dismantling, demolition, or removal of improvements.

Use of Equipment by the Government (Apr 1984)

(a) The Government may take over and operate, with Government employees, such equipment as is necessary for heating or cooling such areas of the building as require the service, as soon as the installation is sufficiently complete.

(b) The Contracting Officer will advise the Contractor by letter, prior to the use of equipment, which items of equipment will be operated, and the date and time such operation begin.

(c) Government operation of equipment will not relieve the Contractor of the one-year guarantee on materials and workmanship elsewhere provided for in this contract.

(d) The guarantee period, elsewhere provided for in this contract, for each piece of equipment shall be in accordance with the "Guarantees" clause of this contract.

(End of clause)

552.236-82 Subcontracts.

As prescribed in 536.570-13, insert the following clause in solicitations and contracts for construction services when the contract amount is expected to exceed the small purchase limitation.

SUBCONTRACTS (APR 1984)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors, or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of his own employees and of subcontractors and their employees. He shall also be responsible for the coordination of the work of the trades, subcontractors and suppliers.

(c) The Government will not undertake to settle any differences between or among the Contractor, subcontractors, or suppliers.

(End of clause)

552.236-83 Furnishing information and records.

As prescribed in 536.570-14, insert the following clause in solicitations and contracts when a construction contract or a contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limitation.

FURNISHING INFORMATION AND RECORDS (APR 1984)

(a) If the Contractor or any subcontractor under this contract, or the officers or agents of the Contractor or any subcontractor, refuses, except as provided by the terms of this contract, to furnish to any Government agency or any establishment in the legislative or judicial branch of the Government information or records reasonably pertinent to this contract. The following actions may be taken:

(1) In the case of a refusal by the Contractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, terminate the Contractor's right to proceed with the work. The rights and remedies provided in this clause are in addition to those outlined in paragraph (a) of the Default (Fixed-Price Construction) clause of FAR 52.249-10, paragraph (b) of the Liquidated Damages—Construction clause at FAR 52.212-5 and to any other rights and remedies provided by law or under this contract;

(2) in the case of a refusal by a subcontractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, require the Contractor to terminate the subcontract without cost to the Government, or if the Contractor fails or refuses to effect such termination, the Government may terminate the Contractor's right to proceed with the work under this contract and thereupon the Government may avail itself of the rights and remedies referred to in subparagraph (b) above.

(b) The term "subcontract" as used in this paragraph means any contract entered into, or any purchase order issued by, a prime contractor under a contract with the Government in connection with the performance of the prime contractor's obligations this contract.

(c) The term "subcontractor" as used in this paragraph means a party to a subcontract other than the prime contractor under this contract.

(End of clause)

552.236-84 Government rights (unlimited).

As prescribed in 536.570-15, insert the following clause in contracts for architect-engineer services.

GOVERNMENT RIGHTS (UNLIMITED) (APR 1984)

The Government shall have unlimited rights in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

552.236-85 Drawings and other data to become property of government.

As prescribed in 536.570-16, substitute the following clause in contracts for architect-engineer services for the clause at 552.236-84, when the sole rights and exclusive control over the design and data are required by the Government.

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (APR 1984)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

552.237-70 Qualification of offerors.

As prescribed in § 537.110(a), insert the following provision:

QUALIFICATIONS OF OFFERORS (APR 1984)

(a) Offers will be considered only from responsible organizations or individuals now or recently engaged in the performance of building service contracts comparable to those described in this solicitation. In order to determine his qualifications, each offeror may be requested to furnish a narrative statement listing comparable contracts which he has performed; the general history of his operating organization; and his complete experience. Each offeror may also be requried to furnish a statement of his financial resources; show that he has the ability to maintain a staff of regular employees adequate to insure continuous performance of the work; and, demonstrate that his equipment and/or plant capacity for the work contemplated is sufficient, adequate, and suitable.

(b) Competency in performing comparable building service contracts, demonstration of acceptable financial resources, personnel staffing, plant, equipment, and supply sources will be considered in determining the offer to be accepted.

(c) Prospective offerors are advised that in evaluating these areas involving any small business concern or group of such concerns, any negative determinations are subject to the Certificate of Competency procedures set forth in the Federal Acquisition Regulation.

(End of provision)

[49 FR 10868, Mar. 22, 1984. Redesignated and amended at 53 FR 30845, Aug. 16, 1988]

552.237-71 Qualifications of employees.

As prescribed in 537.110(b), insert the following clause:

QUALIFICATIONS OF EMPLOYEES (APR 1984)

The Contracting Officer may require dismissal from the work of employees which he deems incompetent, careless, insubordinate, unsuitable or otherwise objectionable, or whose continued employment he deems contrary to the public interest or inconsistent with the best interest of national security. The Contractor shall fill out and cause each of his employees on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, he and his employees shall be fingerprinted. Each employee of the contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidence by Alien Registration Receipt Card Form I-151, or, who presents other evidence from the Immigration and Naturalization Service that employment will not affect his immigration status.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 53 FR 30845, Aug. 16, 1988]

552.237-72 Certification regarding "Quasi-Military Armed Forces."

As prescribed in 537.110(c), insert the following certification:

CERTIFICATION REGARDING "QUASI-MILITARY ARMED FORCES" (APR 1984)

(a) By signing this offer, the offeror certifies that the individual, firm, or corporation submitting this offer is not a "Quasi-Mili-

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tary Armed Force" within the meaning of the decision of the court in United States ex. rel. Weiberger v. Equifax, 557 F. 2d 456 (5th Cir. 1977).

(b) The offeror further certifies that he will not, during the term of this contract, offer "Quasi-Military Armed Forces" for hire.

(End of certification)

[49 FR 10868, Mar. 22, 1984, as amended at 53 FR 30845, Aug. 16, 1988]

552.242-70 Status Report of Orders and Shipments.

As prescribed in section 542.1107(a), insert the following clause:

STATUS REPORT OF ORDERS AND SHIPMENTS (MAY 1987)

(a) On the first and fifteenth of each month during the contract period the Contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made. The information required by the Government must be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instructions on the form.

(b) Submission of the information in an automated printout form as an attachment to the GSA Form 1678 is acceptable when authorized by the ACO. In that instance, blocks 1 through 5 of the GSA Form 1678 must be completed and attached as a cover page to the automated report.

(c) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or the Contractor may reproduce the form.

(End of Clause)

[52 FR 21057, June 4, 1987]

552.242-71 Preproduction samples.

As prescribed in GSAR 542.1107(b), insert a clause substantially as follows:

PREPRODUCTION SAMPLES (APR 1984)

The Contractor shall have available at his expense within (specify appropriate number of days) calendar days after receipt of notice of award two preproduction samples of each item to be delivered under the contract for inspection and determination by the Government as to compliance with the specifications. The Contractor shall notify the Contracting Officer and the Regional Quality Assurance Division set forth in the notice of award, in writing, of the availability of the samples for inspection, the notification to be made (*specify appropriate number of days*) calendar days prior to the date the Contractor proposes to have the samples available. The Contractor shall without any additional charge provide all necessary facilities for inspection of the samples.

Preproduction samples required by this contract must conform to all specification requirements. The acceptance of any previous preproduction samples or the granting of any deviations on previous preproduction samples or on supplies required by previous contracts for the same item(s) shall in no way be considered as justification for assuming that the preproduction samples submitted under this contract will be accepted unless they fully meet specifications or that deviations will be granted.

When the preproduction samples are approved, the Government shall notify the Contractor of their acceptance in writing. After acceptance, one preproduction sample shall be retained by the Contractor and made available to the Government without additional cost to the Government, at the location where the material is offered to the Government for inspection, until completion of the contract, at which time it may be delivered in "like new" condition as part of the last scheduled delivery under the contract. The other preproduction sample shall be delivered to the Government in accordance with instructions to be furnished by the Contracting Officer and upon acceptance shall be deemed an item delivered under the contract.

If the Contractor fails to deliver the preproduction samples, or if the Government disapproves the preproduction samples, the Contractor shall be deemed to have failed to make delivery within the meaning of the "Default" clause of this contract and this contract shall be subject to termination for default, provided that failure of the Government in such an event to terminate this contract for default shall not relieve the Contractor of his responsibility to meet the delivery schedule for production quantities.

The Government reserves the right to waive the requirements for preproduction samples as to those bidders offering a product which has been previously procured and approved by General Services Administration under the same specifications applicable to this procurement.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 1538, Jan. 11, 1985]

552.242-72 Disposition of production samples.

As prescribed in 542.1107(c), insert the following clause in solicitations and contracts for supplies when source inspection is required and testing is to be conducted at a Government facility.

Disposition of Production Samples (Apr 1984)

Production samples sent to a Government testing facility will be disposed of in the following manner: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in the manner requested by the Contractor.

(End of clause)

552.243-70 Pricing of adjustments.

As prescribed in 543.205(a), insert the following clause in all formally advertised and negotiated contracts which are expected to exceed the small purchase limitation except cost type contracts.

Pricing of Adjustments (Apr 1984)

When costs are a factor in any determination of a contract price adjustment pursuant to the "Changes" clause or any other clause of this contract, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract.

(End of clause)

552.243-71 Equitable adjustments.

As prescribed in 543.205(b), insert the following clause in solicitations and contracts for (a) dismantling, demolition, or removal of improvements; and (b) construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation:

Equitable Adjustments (Apr 1984)

(a) The provisions of the "Changes" clause prescribed by FAR 52.243-4 are supplemented as follows:

(1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in the "Equitable Adjustments" clause, for work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(i) Proposals totaling $5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(ii) For proposals in excess of $5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following detail:

Direct Costs

Material quantities by trades and unit costs (Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the job site.)

Labor breakdown by trades and unit costs. (Identified with specific item of material to be placed or operation to be performed.)

Construction equipment exclusively necessary for the change.

Costs of preparation and/or revision to shop drawings resulting from the change.

Workmen's Compensation and Public Liability Insurance.

Employment taxes under FICA and FUTA.

Bond Costs—when size of change warrants revision.

Overhead, Profit and Commission

(2) The allowable overhead shall be determined in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract. The percentages for profit and commission shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the following unless the contractor demonstrates entitlement to a higher percentage:

	Overhead	Profit (percent)	Commission (percent)
To contractor on work performed by other than his own forces			10
To first tier subcontractor on work performed by his subcontractors			10

	Overhead	Profit (percent)	Commission (percent)
To contractor and/or the subcontractors for that portion of the work performed with their respective forces	([1])	10	....

[1] To be negotiated.

Not more than four percentages will be allowed regardless of the number of tier subcontractors. The Contractor shall not be allowed a commission on the commission received by a first tier subcontractor. Equitable adjustments for deleted work shall include credits for overhead, profit and commission. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work.

(3) The Contractor shall submit with the proposal his request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the contract in its entirely.

(4) In considering a proposal, the Government shall make check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.

(5) After receipt of a proposal the Contracting Officer shall act thereon, within 30 days; provided however, that when the necessity to proceed with a change does not allow time properly to check a proposal or in the event of failure to reach an agreement on a proposal, the Government may order the Contractor to proceed on the basis of price to be determined at the earliest practicable date. Such price shall not be more than the increase or less than the decrease proposed.

(6) If a mutually acceptable agreement cannot be reached, the Contracting Officer may determine the price unilaterally.

(b) The provisions of the "Differing Site Conditions" clause prescribed by FAR 52.236-2 are supplemented as follows: The Contractor shall submit all claims for equitable adjustment in accordance with, and subject to the requirements and limitations set out in paragraph (a) of this "Equitable Adjustments" clause.

(End of clause)

552.246-70 Inspection facilities.

As prescribed in 546.302-70, insert the following clause.

INSPECTION FACILITIES (APR 1984)

(a) The inspection system required to be maintained by the Contractor in accordance with clause 52.246-2, Inspection of Supplies—Fixed-Price, may be the Contractor's own facilities or any other facilities acceptable to the Government. These facilities shall be utilized to perform all inspections and tests of materials and components prior to incorporation into end articles, and for the inspection of such end articles prior to shipment. The right is reserved by the government to evaluate the acceptability and effectiveness of the Contractor's inspection system prior to award and periodically during the contract period.

(b) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(c) A contract will be awarded only to the responsible offeror (1) who agrees deliver the items specified in the contract from a plant or warehouse located within the United States (including Puerto Rico and the Virgin Islands) that is equipped to perform all inspections and tests required by the contract or specifications, to evidence conformance therewith, or (2) who will arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 51 FR 8679, Mar. 13, 1986]

552.246-71 Final inspection and tests.

As prescibed in GSAR 546.312, insert the following clause.

FINAL INSPECTION AND TESTS (DEC 1984)

The requirements of the Inspection of Construction clause prescribed in FAR 52.246-12 are supplemented to provide that the Contractor shall give the Contracting Officer at least 10 calendar days advance written notice of the date the work will be fully completed and ready for final inspection and tests. Final inspection and tests will be started within 10 calendar days from the date specified in the aforesaid notice unless the Contracting Officer determines that the work is not ready for final inspection and so informs the Contractor.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 1538, Jan. 11, 1985; 51 FR 8679, Mar. 13, 1986]

552.246-72 Responsibility for supplies (rejected supplies).

As prescribed in GSAR 546.316-70, insert the following clause.

RESPONSIBILITY FOR SUPPLIES—REJECTED SUPPLIES (JULY 1984)

As provided in FAR 52.246-16, the Contractor shall bear all risks as to rejected supplies after notice of rejection. The Contractor shall be liable for all costs, including but not limited to storage costs, incurred by the Government in taking such measures as are expedient to save unnecessary loss to the Contractor. Should the Contractor upon due notice fail to remove or provide instructions for the removal of the rejected supplies within the period specified by the Government, or within a reasonable period of time if no period is specified, the supplies may be stored for the Contractor's account, or reshipped to the Contractor at the Contractor's expense, or sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including costs of the sale. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 1539, Jan. 11, 1985; 51 FR 8679, Mar. 13, 1986]

552.246-73 Source inspection.

As prescribed in GSAR 546.302-71, insert the following clause:

SOURCE INSPECTION (FEB 1986)

(a) *Inspection by Government personnel.*

(1) Supplies to be furnished under this contract will be inspected at source by the Government prior to shipment from the manufacturing plant or other facility designated by the Contractor, unless (a) the Contractor is notified otherwise in writing by the Contracting Officer or a designated representative or (b) the Contractor or its subcontractor is authorized by inclusion of the Contractor Inspection Requirements clause in this contract to ship supplies. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment.

(2) Inspection responsibility will be assigned, by written notice, to the Contract Management Division of the GSA regional office having jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for source inspection is located. The Contractor shall notify, or arrange for his subcontract to notify, that office at least 10 calendar days prior to the date when supplies will be ready for inspection. Shipments shall not be made until released by the Contract Management Division unless release is otherwise authorized by inclusion of the Contractor Inspection Requirements clause in this contract.

(b) *Inspection and receiving reports.* The Contractor shall be responsible for preparation and distribution of inspection documents as follows: (1) DD Form 250, Material Inspection and Receiving Report, for deliveries to military agencies; or (2) GSA Form 308, Notice of Inspection, for deliveries to GSA or other civilian agencies. When required, the Contractor will be furnished a supply of GSA Form 308 and/or DD Form 250, and complete instructions for their preparation and distribution.

(c) *Availability of records.* In addition to any other requirement of the contract, the Contractor shall maintain at the point for source inspection, and make available to the Contracting Officer or an authorized representative, for the duration of the contract and 6 months (180 days) thereafter, records showing the following information for each order received under the contract: (1) order number; (2) date order received by the contractor; (3) quantity ordered; (4) date scheduled into production; (5) batch or lot number, if applicable; (6) date inspected and/or tested; (7) date available for shipment; and (8) date shipped or date service completed.

(d) *Additional cost of inspection and testing.* The Contractor will be charged for any additional cost of inspecting/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of clause 52.246-2, Inspection of Supplies—Fixed-Price. If supplies purchased on an f.o.b. destination basis were source-inspected by Government personnel, but the supplies are not delivered or are delivered in a condition requiring Government reinspection of the same or replacement material, the Contractor will be charged for the cost of such reinspection. Charges for inspection or testing are specified elsewhere in the contract.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 50 FR 1539, Jan. 11, 1985; 51 FR 8679, Mar. 13, 1986]

552.246-74 Charges for inspection and testing.

As prescribed in GSAR 546.302-72, insert the following clause.

Charges for Inspection and Testing (Apr 1984)

As provided in the clauses in this contract relating to inspection, the Contractor will be charged for any additional cost to the Government for inspection and testing (or reinspection and retesting). When such inspection or testing is performed by or under the direction of the General Services Administration, charges will be at the rate of $*—per man-hour or fraction thereof if the inspection is at GSA supply distribution facility; $*—per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $*—per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(End of clause)

* The rates to be inserted in the clause are determined and published by the Commissioner, Federal Supply Service, or a designee.

[49 FR 10868, Mar. 22, 1984, as amended at 51 FR 8680, Mar. 13, 1986]

552.246-75 Guarantees.

As prescribed in GSAR 546.710(b), insert the following clause:

Guarantees (Feb 1986)

(a) Unless otherwise provided in the specifications, the Contractor guarantees all work to be in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for 1 year after the date of final acceptance or the date the equipment or work was placed in use by the Government, whichever occurs first.

(b) If, within any guarantee period, the Contracting Officer finds that guaranteed work needs to be repaired or changed because of the use of materials, equipment, or workmanship is inferior, defective, or not in accordance with the terms of the contract, the Contracting Officer shall so inform the Contractor in writing and the Contractor shall promptly and without additional expense to the Government:

(1) Place in a satisfactory condition all guaranteed work;

(2) Satisfactorily correct all damage to equipment, the site, the building or contents thereof, which is the result of such unsatisfactory guaranteed work; and

(3) Satisfactorily correct any work, materials, and equipment that are disturbed in fulfilling the guarantee, including any disturbed work materials and equipment that may have been guaranteed under another contract. Should the Contractor fail to proceed promptly in accordance with the guarantee, the Government may have such work performed at the expense of the Contractor.

(c) Any special guarantees that may be required under the contract will be subject to the stipulations set forth above, insofar as they do not conflict with the provisions of such special guarantees.

(d) The Contractor shall obtain each transferable guarantee or warranty of equipment, materials or installation thereof which is furnished by any manufacturer, supplier or installer in the ordinary course of the manufacturer's, supplier's, or installer's business or trade. In addition, the Contractor shall obtain and furnish to the Government all information which is required in order to make any such guarantee or warranty legally binding and effective, and shall submit both the information and the guarantee or warranty to the Government in sufficient time to permit the Government to meet any time limit requirements specified in the guarantee or warranty or, if no time limit is specified, prior to completion and acceptance of all work under this contract.

(End of clause)

[49 FR 10868, Mar. 22, 1984, as amended at 51 FR 8680, Mar. 13, 1986]

552.246-76 Warranty of pesticides.

As prescribed in GSAR 546.710(a), insert the following clause:

Warranty of Pesticides (Feb 1986)

(a) Notwithstanding acceptance of pesticides by the Government, the Contractor warrants that for the period of 1 year after the date of shipment, all pesticides furnished under this contract shall meet the regulatory requirements of Pub. L. 92-516, as amended, and shall be registered with the Administrator, Environmental Protection Agency (EPA).

(b) If EPA takes action to stop sale, stop use, remove, seize, or cancel registration of a pesticide within 1 year after date of shipment, the Contractor shall immediately notify the Contracting Officer. The notification will include: (1) Contract number; (2) identification of the pesticide; (3) reason for the EPA action against the pesticide; and (4) list of Government agencies and addresses to which it was delivered.

(End of clause)

[51 FR 8680, Mar. 13, 1986]

552.246-77 Contractor inspection requirements.

As prescribed in GSAR 546.301, insert the following clause:

CONTRACTOR INSPECTION REQUIREMENTS (FEB 1986)

(a) The Contractor shall provide and maintain a quality control system that complies with all requirements of the Federal Standard 368 edition in effect on the date the solicitation was issued and shall ship supplies found by the Contractor to meet contract requirements. The Contractor shall prepare a written description of the quality control system. This description must be made available to the Government prior to award and must be kept current and available to the Government during contract performance and for as long afterwards as the contract requires. Any changes to the system during contract performance must be reported to the cognizant quality assurance office.

(b) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies. Although the Government will normally rely upon the Contractor's quality control system to ensure the quality of items shipped, it reserves the right to inspect before acceptance at all times and places including the point of manufacture. When the Government advises the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify, or arrange for its subcontractor to notify, the cognizant quality assurance office at least 10 calendar days before the date the supplies will be ready for inspection. The material will not be shipped until the Government has inspected it.

(c) During the contract period, a Government representative will periodically select samples of material produced under the contract for Government verification, inspection, and testing.

(d) The Government may reject defective supplies or services, in writing, within * days after delivery, notwithstanding the provisions of any other clause concerning conclusiveness of acceptance. The Contractor shall in such event replace, correct, or repair the rejected supplies or services, at the Contractor's expense, within 30 calendar days (or such longer period as the Government may authorize in writing) after receipt of notice to replace or correct.

(e) If material in process, shipped, or awaiting shipment to fill Government orders is defective or if deficiencies in either plant quality or process controls are found, the Contractor may be issued a Quality Deficiency Notice (QDN). Upon receiving such a notice, the Contractor shall take immediate corrective action and suspend shipment of items covered by the QDN until the defects or deficiencies are corrected. Within 5 workdays of receiving the QDN, the Contractor shall notify the cognizant quality assurance office of corrective action taken or to be taken to permit onsite verification by a Government representative. Shipments of nonconforming materials will be returned at the Contractor's expense and may be cause for termination of the contract for default. Delays due to the need for corrective action pursuant to this clause will not constitute excusable delays under the Default clauses. Failure to complete corrective action in a timely manner may result in termination of this contract.

(f) This contract may be terminated for default if subsequent Government inspection discloses that plant quality and progress controls are not being maintained, subspecification material is being shipped, or for failure to comply with any of the provisions contained in this clause.

(End of clause)

* Contracting officers shall normally insert 365 days as the period for replacing defective material. However, when the material being bought has a shelf life of less than 1 year, the shelf life period should be used, or in instances where a longer period may reasonably be expected to be available, the longer warranty period should be used.

[51 FR 8680, Mar. 13, 1986]

552.247-70 Placarding railcar shipments.

As prescribed in section 547.305-70, insert the following clause:

PLACARDING RAILCAR SHIPMENTS (APR 1984)

When a railcar is loaded in such a manner that it can be or should be unloaded from only one side, the Contractor is required to placard the car with two placards, one placard placed on the appropriate car door reading "UNLOAD FROM THIS SIDE" and the other placard placed on the opposite door reading "UNLOAD FROM OTHER SIDE."

[49 FR 10868, Mar. 22, 1984, as amended at 51 FR 195, Jan. 3, 1986]

552.249-70 Termination for convenience of the Government (Fixed Price) (Short Form)

As prescribed in section 549.502(a) insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (NOV 1985) (DEVIATION FAR 52.249-1)

(a) The Government may terminate this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. In the event of any such termination, the rights of the Government and the Contractor shall be determined as provided in paragraph (b) unless there is a termination liability schedule, in which case the rights of the parties shall be determined as provided in paragraph (c).

(b) The clause set forth in 52.249-1 of the FAR shall be applicable to the supply portion of the contract and the clause set forth in 52.249-4 of the FAR shall be applicable to the service portion of the contract.

(c) If the Contractor specifies a schedule of termination liability charges that would be incurred by the Government if the Government terminates this lease contract without taking title to the equipment, the payment of such charges shall be the only responsibility of the Government to compensate the Contractor for such termination; except that, in any event there shall be no termination liability for equipment which was not installed prior to the termination of this contract.

(End of clause)

[51 FR 195, Jan. 3, 1986]

552.249-71 Termination for convenience of the Government (Fixed-Price)

As prescribed in section 549.502(b), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (NOV 1985) (DEVIATION FAR 52.249-2)

(a) The Government may terminate this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. In the event of any such termination, the rights of the Government and the Contractor shall be determined as provided in paragraph (b) unless there is a termination liability schedule, in which case the rights of the parties shall be determined as provided in paragraph (c).

(b) The clause set forth in 52.249-2 of the FAR shall be applicable to the supply portion of the contract and the clause set forth in 52.249-4 of the FAR shall be applicable to the service portion of the contract.

(c) If the Contractor specifies a schedule of termination liability charges that would be incurred by the Government if the Government terminates this lease contract without taking title to the equipment, the payment of such charges shall be the only responsibility of the Government to compensate the contractor for such termination; except that, in any event there shall be no termination liability for equipment which was not installed prior to the termination of this contract.

(End of clause)

[51 FR 196, Jan. 3, 1986]

552.249-72 Submission of termination liability schedule.

As prescribed in section 549.570 insert the following provision:

SUBMISSION OF TERMINATION LIABILITY SCHEDULE (NOV 1985)

(a) An offeror may submit, as part of its proposal, a termination liability schedule to be applied in the event any resultant contract is terminated by the Government for reasons other than default. The offeror shall provide and explain the amount and method of computation of the termination liability charge(s).

(b) If submitted, the termination liability schedule will be made a part of any resultant contract and be incorporated into Part I, Section B of the contract document. In the event a termination liability schedule is not submitted and the Government terminates and resultant contract for its convenience, the rights of the parties shall be determined in accordance with paragraph (b) of the GSAR Termination for Convenience of the Government clause set forth in 552.249-70 or 552.249-71, whichever is applicable.

(c) Any termination liability charges existing at the end of the evaluated contract period will be considered in the evaluation of offers.

(End of provision)

[51 FR 196, Jan. 3, 1986]

552.252-5 Authorized Deviations or Variations in Provisions.

As prescribed in GSAR 552.107(a), insert the following provision:

AUTHORIZED DEVIATIONS OR VARIATIONS IN PROVISIONS (DEVIATION FAR 52.252-5) (JULY 1985)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation or variation is indicated by the addition of "(DEVIATION)" or "(VARIATION)" after the date of the provision, if the provision is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5). The use in this solicitation of any Federal Acquisition Regulation (FAR) provision with an authorized deviation or variation that is published in the General Services Administration Acquisition Regulation is indicated by the addition of "(DEVIATION (FAR provision no.))" or "(VARIATION (FAR provision no.))" after the date of the provision.

(b) The use in this solicitation of any General Services Administration Acquisition Regulation provision with an authorized deviation or variation is indicated by the addition of "(DEVIATION)" or "(VARIATION)" after the date of the provision.

(c) Changes in wording of provisions that are prescribed for use on a "substantially the same as" basis are not considered deviations. Therefore, when such provisions are not worded exactly the same as the FAR or GSAR provision, they are identified by the word "(VARIATION)."

(End of provision)

[50 FR 29403, July 19, 1985]

552.252-6 Authorized deviations or variations in clauses.

As prescribed in GSAR 552.107(b), insert the following clause:

AUTHORIZED DEVIATIONS OR VARIATIONS IN CLAUSES (DEVIATION FAR 52.252-6) (JULY 1985)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation or variation is indicated by the addition of "(DEVIATION)" or "(VARIATION)" after the date of the clause, if the clause is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5). The use in this solicitation of any Federal Acquisition Regulation (FAR) clause with an authorized deviation or variation that is published in the General Services Administration Acquisition Regulation is indicated by the addition of "(DEVIATION (FAR clause no.))" or "(VARIATION (FAR clause no.))" after the date of the clause.

(b) The use in this solicitation of any General Services Administration Acquisition Regulation clause with an authorized deviation or variation is indicated by the addition of "(DEVIATION)" or "(VARIATION)" after the date of the clause.

(c) Changes in wording of clauses that are prescribed for use on a "substantially the same as" basis are not considered deviations. Therefore, when such clauses are not worded exactly the same as the FAR or GSAR clause, they are identified by the word "(VARIATION)."

(End of clause)

[50 FR 29403, July 19, 1985; 50 FR 33547, Aug. 20, 1985]

552.253-70 Forms containing solicitation provisions and/or contract clauses incorporated by reference.

As prescribed in 553.171, insert the following provision in solicitations in order to incorporate forms containing solicitation provisions and/or contract clauses by reference. List each of these forms by number, title, and date.

FORMS CONTAINING SOLICITATION PROVISIONS AND/OR CONTRACT CLAUSES INCORPORATED BY REFERENCE (APR 1984)

This solicitation incorporates the following forms containing solicitation provisions and/or contract clauses by reference, with the same force and effect as if they were included in full text. Upon request, the contracting officer will make the forms available.

GSA Form ______

(End of clause)

552.270-1 Preparation of Offers.

As prescribed in GSAR 570.701-1, insert the following provision:

PREPARATION OF OFFERS (JUNE 1985)

(a) Offerors are expected to read all parts of this solicitation.

(b) Offers must be (1) submitted on the forms prescribed and furnished by the Government as a part of this solicitation or on copies of those forms, and (2) signed. The person signing an offer must initial each erasure or change appearing on any offer form. If the offeror is a partnership, the names of the partners composing the firm must be included with the offer.

(c) Offers will be construed to be in full and complete compliance with this solicitation unless the offer describes any deviation in the offer.

(End of provision)

[50 FR 27589, July 5, 1985]

552.270-2 Explanation to prospective offerors.

As prescribed in GSAR 570.701-2, insert the following provision:

EXPLANATION TO PROSPECTIVE OFFERORS (JUNE 1985)

Any prospective offeror desiring an explanation or interpretation of the solicitation should request it in writing. Oral explanations or instructions given to a prospective offeror will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offeror.

(End of provision)

[50 FR 27590, July 5, 1985; 50 FR 30274, July 25, 1985]

552.270-3 Late submissions, modifications, and withdrawals of offers.

As prescribed in GSAR 570.701-3, insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF OFFERS (JUNE 1985)

(a) Any offer or modification of an offer which is received after the exact time specified for receipt of "best and final" offers will not be considered unless it is received before award is made, and—

(1) It was sent registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);

(2) It was sent by mail (telegram or mailgram if authorized) and it was determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) It is the only offer received.

(b) The only acceptable evidence to establish—

(1) The date of the mailing of a late offer or modification sent either by registered or certified mail is the U.S. Postal Service postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer or modification will be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request that the postal clerk place a hand canceled postmark on both the receipt and the envelope or wrapper.)

(2) The time of receipt at the Government installation is the time-date stamp of such installation on the offer wrapper or other documentary evidence of receipt maintained by the installation.

(c) Notwithstanding (a), of this provision, a late modification of an otherwise successful offer which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(d) Offers may be withdrawn by written notice or telegram (including mailgram) received at any time prior to award. Offers may be withdrawn in person by an offeror or his authorized representative, provided his identity is made known and he signs a receipt for the proposal before award.

(End of provision)

[49 FR 10868, Mar. 22, 1984. Redesignated and amended at 50 FR 27589, 27590, July 5, 1985]

552.270-4 Historic preference.

As prescribed in GSAR 570.701-4, insert the following provision:

HISTORIC PREFERENCE (JUNE 1985)

(a) Preference will be given to offers of space in buildings on, or formally listed as eligible for inclusion in the National Register of Historic Places and to historically significant buildings in historic districts listed in the National Register. Such preference will be extended to historic buildings and will result in award if:

(1) The offer for space meets the terms and conditions of this solicitation as well as any other offer received. (It is within the discretion of the Contracting Officer to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of the building such as high ceilings, wooden floor, etc.); and

(2) The rental is no more than 10 percent higher on a total annual square foot (net usable area) cost to the Government than the lowest otherwise acceptable offer.

(b) If more than one offer of an historic building is received and they meet the above criteria, an award will then be made to the lowest priced historic property offered.

(End of provision)

[49 FR 10868, Mar. 22, 1984. Redesignated and amended at 50 FR 27589, 27590, July 5, 1985]

552.270-5 Lease award.

As prescribed in GSAR 570.701-5, insert the following provision:

LEASE AWARD (JUNE 1985)

(a) The Government will award a lease resulting from this solicitation to the responsible offeror, whose offer conforming to the solicitation, will be most advantageous to the Government, price and other factors specified elsewhere in this solicitation, considered.

(b) The Government may (1) reject any or all offers, (2) accept other than the lowest priced offer, and (3) waive informalities and minor irregularities in offers received.

(c) Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Government.

(d) The unconditional acceptance of an offer establishes a valid contract.

(End of provision)

[50 FR 27590, July 5, 1985]

552.270-6 Parties to execute lease.

As prescribed in GSAR 570.701-6, insert the following provision:

PARTIES TO EXECUTE LEASE (JUNE 1985)

(a) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of his power of attorney, or other evidence to act on behalf of the Lessor, must accompany the lease.

(b) If the Lessor is a partnership, the lease must be signed with the partnership name, followed by the name of the legally authorized partner signing the same.

(c) If the Lessor is a corporation, the lease must be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of this authority so to act must be furnished.

(End of provision)

[50 FR 27590, July 5, 1985]

552.270-7—552.270-9 [Reserved]

552.270-10 Definitions.

As prescribed in GSAR 570.702-1, insert the following clause:

DEFINITIONS (JUNE 1985)

(a) The terms "contract" and "Contractor" shall mean "lease" and "Lessor," respectively.

(b) If the lease is a sub-lease, the term "Lessor" means the sub-lessor.

(c) The term "Lessor shall provide" means the Lessor shall furnish and install.

(End of clause)

[50 FR 27590, July 5, 1985]

552.270-11 Subletting the premises.

As prescribed in GSAR 570.702-2, insert the following clause:

SUBLETTING THE PREMISES (JUNE 1985)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting.

(End of clause)

[49 FR 10868, Mar. 22, 1984. Redesignated and amended at 50 FR 27589, 27590, July 5, 1985]

552.270-12 Maintenance of premises.

As prescribed in GSAR 570.702-3, insert the following clause:

MAINTENANCE OF PREMISES (JUNE 1985)

The Lessor shall maintain the demised premises, including the building and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease in good repair and tenantable condition, except in case of damage arising from the act or the negligence of the Government's agents or employees. For the purpose of so maintaining said premises and property, the Lessor may at reasonable times, and with the approval of the authorized Government representative in charge, enter and inspect the same and make any necessary repairs thereto.

(End of clause)

[49 FR 10868, Mar. 22, 1984. Redesignated and amended at 50 FR 27589, 27590, July 5, 1985]

552.270-13 Damage by fire or other casualty.

As prescribed in GSAR 570.702-4, insert the following clause:

DAMAGE BY FIRE OR OTHER CASUALTY (JUNE 1985)

If the said premises be destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days thereafter; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage.

(End of clause)

[50 FR 27590, July 5, 1985]

552.270–14 Condition report.

As prescribed in GSAR 570.702-5, insert the following clause:

Condition Report (June 1985)

A joint physical survey and inspection report of the demised premises will be made as of the effective date of this lease, reflecting the then present condition, and will be signed on behalf of the parties hereto.

(End of clause)

[50 FR 27590, July 5, 1985]

552.270–15 Applicable codes and ordinances.

As prescribed in GSAR 570.702-6, insert the following clause:

Applicable Codes and Ordinances (June 1985)

The Lessor, as part of the rental consideration, agrees to comply with all codes and ordinances applicable to the ownership and operation of the building in which the leased space is situated and, at his own expense, to obtain all necessary permits and related items.

(End of clause)

[49 FR 10868, Mar. 22, 1984. Redesignated and amended at 50 FR 27589, 27590, July 5, 1985]

552.270–16 Inspection of premises.

As prescribed in GSAR 570.702-7, insert the following clause:

Inspection of Premises (June 1985)

At all times after receipt of offers, prior to or after acceptance of any offers, or during any construction, remodeling, or renovation work, the premises and the building or any parts thereof, upon reasonable and proper notice, must be accessible for inspection by the Contracting Officer, or by architects, engineers, or other technicians representing him, to determine whether the essential requirements of the solicitation or the lease requirements are met. Additionally, the Government reserves the right, upon reasonable notice, to inspect and perform bulk sampling and analysis of suspected asbestos-containing materials and to monitor the air for asbestos fibers in the space offered or under lease as well as other areas of the building deemed necessary by the Contracting Officer.

(End of clause)

[50 FR 27591, July 5, 1985]

552.270–17 Failure in performance.

As prescribed in GSAR 570.702-8, insert the following clause:

Failure in Performance (June 1985)

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are dependent. In the event of failure by the Lessor to provide any of these items, the Government may by contract or otherwise perform the service, maintenance, utility, or repair, and charge to the Lessor any cost incurred by the Government that is related to the performance of such service, maintenance etc., including any administrative costs, and deduct such cost from any rental payments. Alternately, the Government may reduce rental payments by the corresponding value of the contract requirement not performed, as determined by the Contracting Officer. These remedies are not exclusive and are in addition to any other remedies which may be available under this contract or in the law.

(End of clause)

[50 FR 27591, July 5, 1985]

552.270–18 Lessor's successors.

As prescribed in GSAR 570.702-9, insert the following clause:

Lessor's Successors (June 1985)

The terms and provisions of this lease and the conditions herein bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns.

(End of clause)

[50 FR 27591, July 5, 1985]

552.270–19 Alterations.

As prescribed in GSAR 570.702-10, insert the following clause:

Alterations (June 1985)

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for purposes of this paragraph, the leased premises shall include the land on which the building is sited and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.

(End of clause)

[49 FR 10868, Mar. 22, 1984. Redesignated and amended at 50 FR 27589, 27591, July 5, 1985]

552.270-20 **Proposals for adjustment.**

As prescribed in GSAR 570.702-11, insert the following clause:

PROPOSALS FOR ADJUSTMENT (JUNE 1985)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds $25,000. The proposal, including all subcontractor work, will contain at least the following details—

(1) Material quantities and unit costs,

(2) Labor costs (identified with specific item or material to be placed or operation to be performed),

(3) Equipment costs,

(4) Workman's compensation and public liability insurance,

(5) Overhead,

(6) Profit, and

(7) Employment taxes under FICA and FUTA.

(End of clause)

Alternate I (June 1985)

For the acquisition of leasehold interests in real property of 10,000 square feet or more, add paragraphs (c) and (d) to the basic clause.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding $100,000 in cost—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.804-2),

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds $100,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.804-4), and

(3) The agreement for "Price Reduction for Defective Cost or Pricing Data" must be signed and returned (48 CFR 15.804-8).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

(End of clause)

[50 FR 27591, July 5, 1985]

552.270-21 **Changes.**

As prescribed in GSAR 570.702-12, insert the following clause:

CHANGES (JUNE 1985)

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications.

(2) Work or services.

(3) Amount of space.

(4) Facilities or space layout.

(b) If any such change causes an increase or decrease in the Lessor's cost of, or the time required for, performance under this contract, whether or not changed by the order, the Contracting Officer shall modify the lease by (1) making an equitable adjustment in the rental rate, (2) making a lump sum price adjustment, or (3) revising the delivery schedule.

(c) If such change causes an increase in costs under this contract, the Lessor shall submit any "proposal for adjustment" (hereafter referred to as proposal) under the clause at 552.270-20, Proposal for Adjustment.

(d) Adjustments for operating expenses in vacant leased premises will be in accordance with the clause at 552.270-25, Adjustment for Vacant Premises.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.

(f) No services or work for which an additional cost or fee will be charged by the Lessor will be furnished without the prior written authorization of the Contracting Officer or a designated representative of the Contracting Officer.

[50 FR 27591, July 5, 1985]

552.270-22 **Liquidated damages.**

As prescribed in GSAR 570.702-13, insert the following clause:

LIQUIDATED DAMAGES (JUNE 1985)

In case of failure on the part of the Lessor to complete the work within the time fixed in the lease contract or letter of award, the Lessor shall pay the Government as fixed and agreed liquidated damages, pursuant to this clause, the sum of $—— for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all of the space ready for occupancy by the Government.

(End of clause)

[50 FR 27591, July 5, 1985]

552.270-23 Operating Costs.

As prescribed in GSAR 570.702-14, insert the following clause:

OPERATING COSTS (JUNE 1985)

(a) Beginning with the second year of the lease and each year after, the Government shall pay adjusted rent for changes in costs for cleaning services, supplies, materials, maintenance, trash removal, landscaping, water, sewer charges, heating, electricity, and certain administrative expenses attributable to occupancy. Applicable costs listed on GSA Form 1217, Lessor's Annual Cost Statement, when negotiated and agreed upon, will be used to determine the base rate for operating costs adjustment.

(b) The amount of adjustment will be determined by multiplying the base rate by the percent of change in the Cost of Living Index. The percent change will be computed by comparing the index figure published for the month prior to the lease commencement date with the index figure published for the month which begins each successive 12-month period. For example, a lease which commences in June of 1985 would use the index published for May of 1985 and that figure would be compared with the index published for May of 1986, May of 1987, and so on, to determine the percent change. The Cost of Living Index will be measured by the U.S. Department of Labor revised Consumer Price Index for Wage Earners and Clerical Workers, U.S. City Average, All Items Figure, (1967=100) published by the Bureau of Labor Statistics. Payment will be made with the monthly installment of fixed rent. Rental adjustments will be effective on the anniversary date of the lease. Payment of the adjusted rental rate will become due on the first workday of the second month following the publication of the Cost of Living Index for the month prior to the lease commencement date.

(c) If the Government exercised an option to extend the lease term at the same rate as that of the original term, the option price will be based on the adjustment during the original term. Annual adjustments will continue.

(d) In the event of any decreases in the Cost of Living Index occuring during the term of occupancy under the lease, the rental amount will be reduced accordingly. The amount of such reductions will be determined in the same manner as increases in rent provided under this clause.

(e) The offer must clearly state whether the rental is firm throughout the term of the lease or if it is subject to annual adjustment of operating costs as indicated above. If operating costs will be subject to adjustment, it should be specified on block 19 of GSA Form 1364, Proposal to Lease Space, contained elsewhere in this solicitation.

(End of clause)

[50 FR 27591, July 5, 1985]

552.270-24 Tax adjustment.

As prescribed in GSAR 570.702-15, insert the following clause.

TAX ADJUSTMENT (JUNE 1985)

(a) The Government shall pay additional rent for its share of increases in real estate taxes over taxes paid for the calendar year in which its lease commences (base year). Payment will be in a lump sum and become due on the first workday of the month following the month in which paid tax receipts for the base year and the current year are presented, or the anniversary date of the lease, whichever is later. The Government will be responsible for payment only if the receipts are submitted within 60 calendar days of the date the tax payment is due. If no full tax assessment is made during the calendar year in which the Government lease commences, the base year will be the first year of a full assessment.

(b) The Government's share for the tax increase will be based on the ratio of the square feet occupied by the Government to the total rentable square feet in the building. If the Government's lease terminates before the end of a calendar year, payment will be based on the percentage of the year in which the Government occupied space. The payment will not include penalties for non payment or delay in payment. If there is any variance between the assessed value of the Goverment's space and other space in the building, the Government may adjust the basis for determining its shares of the tax increase.

(c) The Government may contest the tax assessment by initiating legal proceedings on behalf of the Government and the Lessor or the Government alone. If the Government is precluded from taking legal action, the Lessor shall contest the assessment upon reasonable notice by the Government. The Government shall reimburse the Lessor for all costs and shall execute all documents required for the legal proceedings. The Lessor shall agree with the accuracy of the documents. The Government shall receive its share of any tax refund. If the Government elects to contests the tax assessment, payment of the adjusted rent shall become due on the first workday of the month following conclusion of the appeal proceedings.

(d) In the event of any decreases in real estate taxes occurring during the term of occupancy under the lease, the rental amount will be reduced accordingly. The amount of any such reductions will be determined in the same manner as increases in rent provided under this clause.

(End of clause)

[50 FR 27592, July 5, 1985]

552.270-25 Adjustment for vacant premises.

As prescribed in GSAR 570.702-16, insert the following clause:

ADJUSTMENT FOR VACANT PREMISES (JUNE 1985)

(a) If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part prior to expiration of the firm term of the lease, the rental rate will be reduced.

(b) The rate will be reduced by that portion of the costs per square foot of operating expenses not required to maintain the space. Said reduction must occur after the Government gives 30 calendar days prior notice to the Lessor, and must continue in effect until the Government occupies the premises or the lease expires or is terminated.

(End of clause)

[50 FR 27592, July 5, 1985]

552.270-26 If minimum not delivered.

As prescribed in GSAR 570.702-17, insert the following clause:

IF MINIMUM NOT DELIVERED (JUNE 1985)

If delivered space contains less than the minimum square footage, the Government may cancel the lease. If such cancellation occurs, the Government may exercise its legal rights including charging the Lessor and its surety the increased cost of providing replacement space.

(End of clause)

[50 FR 27592, July 5, 1985]

552.270-27 Delivery and condition.

As prescribed in GSAR 570.702-18, insert the following clause:

DELIVERY AND CONDITION (JUNE 1985)

Unless the Government elects to have the space occupied in increments, the space must be delivery ready for occupancy as a compete unit. The Government reserves the right to determine when the space is ready to occupy.

(End of clause)

[50 FR 27592, July 5, 1985]

552.270-28 Time extensions.

As prescribed in GSAR 570.702-19, insert the following clause:

TIME EXTENSIONS (JUNE 1985)

The lease will not be terminated nor the Lessor charged with resulting damage if delays arise from unforeseeable causes beyond the control of the Lessor and/or his contractors, subcontractors, suppliers, or another Government contractor. However, the Lessor shall notify the Contracting Officer, in writing, of any delay within 10 calendar days after it begins. The Contracting Officer shall ascertain the facts, determine the extent of the delay, and grant extensions when justified.

(End of clause)

[50 FR 27592, July 5, 1985]

552.270-29 Termination for default.

As prescribed in GSAR 570.702-20, insert the following clause:

TERMINATION FOR DEFAULT (JUNE 1985)

If the Lessor fails to prosecute the work required to deliver the leased premises ready for occupancy by the Government with such diligence as will ensure delivery of the leased premises within the time required by the lease agreement, or any extension of the specified time, or if the Lessor fails to complete said work within such time, the Government may, by written notice to the Lessor, terminate the lease agreement. Regardless of whether the lease is terminated, the Lessor and his sureties shall be liable for any damage to the Government resulting from his failure to deliver the premises ready for occupancy within the specified time.

(End of clause)

[50 FR 27592, July 5, 1985]

552.270-30 Progressive occupancy.

As prescribed in GSAR 570.702-21, insert the following clause:

PROGRESSIVE OCCUPANCY (JUNE 1985)

The Government shall pay rent only when the entire premises or suitable units are ready for occupancy. If the agency occupies the space in partial increments, rent will accrue or be paid on a pro rata basis. Rental payments shall become due on the first workday of the month following the month in which an increment of space is occupied, except that should an increment of space be occupied after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was occupied. The commencement date of the firm term will be a composite determined from all dates of incremental occupancy.

(End of clause)

[50 FR 27592, July 5, 1985]

Subpart 552.3—Provision and Clause Matrixes

552.300 Scope of Subpart.

This subpart consists of a series of matrixes, one each for supply, service construction, architect-engineer and small purchase contracts which lists the applicable GSAR provisions and clauses; and one each for utility contracts (sole supplier-regulated rates) and leases of real property which list the applicable FAR and GSAR provisions and clauses.

NOTE: The matrixes do not appear in the Code of Federal Regulations. The matrixes were filed with the original document establishing the General Services Administration Acquisition Regulation (GSAR) published at 49 FR 10792, Mar. 22, 1984. Individual copies may be obtained from the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Washington, DC 20405.

PART 553—FORMS

Subpart 553.1—General

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Subpart 553.3—Illustrations of Forms

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553.301 Standard forms.
553.370 GSA forms.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10895, Mar. 22, 1984, unless otherwise noted.

Subpart 553.1—General

553.100 Scope of subpart.

This subpart deals with matters which are generally applicable to forms referenced in this GSAR, including delineations of responsibility for the maintenance of forms.

553.101 Requirements for use of forms.

(a) The requirements concerning the use of GSA forms illustrated in this part are explained in other parts of this regulation, with the exception of the forms prescribed in GSAR Subpart 553.2.

(b) The location in the text where a form is prescribed is identified by a cross-reference shown in conjunction with the illustration of the form. Although in some cases a form may be mentioned in several places in this regulation, the section referenced with the illustration contains the basic prescribing language.

553.102 Current editions.

Contracting officers shall use the edition of the procurement forms illustrated in Part 553 unless the use of a later edition is authorized by an Acquisition Circular. For the purposes of this 553.102, a "procurement form" is a form which is contractual in nature, and relates directly to the rights and obligations as between the Government and the contractor, including but not limited to, forms containing solicitation provisions and contract clauses, purchase/delivery orders, and forms containing specification requirements.

553.110 Continuation sheets.

553.110-70 The item listing (Section B of the Uniform Contract Format).

(a) FAR 53.110 provides for the use of specially constructed continuation sheets instead of Standard Form 36, Continuation Sheet. For many procurements, particularly requirements-type contracts, columns other than those shown on SF 36 are needed. Consequently, GSA forms containing appropriate columns may be developed for use, or item listing formats may be typed on blank pages, with or without ruled columns.

(b) When SF 36 is used for the item listing, and unit prices are solicited, the "Amount" column shall be shown as not applicable. This is to avoid problems resulting from possible discrepancies between the unit price and the total price, if both are submitted by an offeror.

553.170 Forms containing clauses.

553.170-1 Forms containing basic clauses.

GSA forms containing clauses prescribed in the FAR and this GSAR that have general applicability to (a) supply contracts, (b) construction contracts, and (c) service contracts are authorized for use on an optional basis (see 553.270-3).

553.170-2 Forms containing supplemental clauses.

(a) *Authority to establish forms.* The heads of contracting activities in the Central Office are authorized to establish GSA forms containing clauses of a more specialized nature than those contained in the forms described in 553.170-1.

(b) *Content of forms.* These forms, which may be attached to or incorporated by reference in solicitations/contracts, should contain clauses which have a relatively broad applicability. In connection with supply contracts, for example, the clauses should have general applicability to all or most contracts established by Central Office and regional contracting activities under one or more buying programs (e.g., Stock program, Federal Supply Schedule program). In the case of nonpersonal service contracts, the clauses should apply to a category of services and/or a large number of contracts for the same type of service (e.g. transportation services, building services).

(c) *Coordination.* Proposed new or revised GSA forms containing clauses shall be coordinated with the Office of GSA Acquisition Policy and Regulations (VP), other interested Central Office activities, and the GSA regions. A copy of the proposed final draft of the form shall then be submitted to the Office of Acquisition Policy for review and concurrence.

553.171 Forms incorporated by reference.

(a) Forms containing solicitation provisions and/or contract clauses should not be incorporated by reference in solicitations/contracts until a copy of the form(s) has been distributed to all prospective offerors on the applicable bidders mailing list with a request that the form be retained for future reference. Copies of forms shall also be forwarded to GSA Business Service Centers.

(b) A clause substantially as that set forth at 552.252-70 shall be used to incorporate forms by reference in solicitations/contracts.

553.172 GSA forms for optional use.

If this GSAR is the prescribing directive of a form which is authorized for use on an optional basis, the establishment of a form serving substantially the same purpose is not permitted without prior concurrence by the Office of Acquisition Policy. See also the GSA Forms Management Program Handbook, Ch. 2 (OAD P 1824.4A) concerning restrictions on the issuance of similar forms.

553.173 Responsibility for the maintenance of forms.

(a) As used in 553.173, the word "maintenance" means the processing of a new or revised form, including coordination with all interested GSA activities, the preparation of camera copy and related documents (e.g., GSA Form 2192, Request for Forms Management Services), and the distribution of copies of the form. The responsibility for maintenance of a form carries with it the responsibility for handling auxiliary actions relating to the form, such as the processing of employee suggestions regarding revisions of the form Activities which are responsible for the maintenance of a form will be shown as the "Originator" in Block 4 of GSA Form 3414, Forms Action/Status Notice, and will pay for the cost of printing the form, unless the form has been designated as "common-use."

(b) The following applies to GSA forms except those originated by activities which provide administrative or technical support to all GSA contracting activities.

(1) If, on the basis of the prescriptive language set forth in this GSAR, two or more GSA services/offices are required to use a specified GSA form, the Office of Acquisition Policy shall be responsible for maintaining the form.

(2) When a GSA form prescribed by this GSAR is required to be used by a particular GSA service/office, or if the form is required to be used in connection with a type of contract which is established by only one GSA service/office (e.g., construction contracts), that service/office shall be responsible for maintenance of the form.

(3) When a GSA form originated by a service/office is authorized for use on an optional basis, that service/office shall retain responsibility for maintenance of the form, notwithstanding that the form may be appropriate for use by other services/offices.

(c) In accordance with paragraph (b) of 553.173, the services/offices indicated below are responsible for maintaining the following GSA forms referenced in this regulation.

GSA form No	Responsible office
19	AT
72	K
72-A	F
276	P
300	V
300-A	V
353	F
387	P
434	F
527	B
618-A	P
618-D	P
1142	P
1364	P
1378	V
1447	F
1458	F
1535	V
1535-A	V
1584	F
1584-A	F
1602	F
1678	F
1720	AT
1766	V
2010	V
2166	P
2419	P
2428	P
2677	AU
2689	V
2728	V
2877	F
2932	V
2981	F
3017	P
3025	B
3077	AU
3186	F
3188	F
3409	V
3410	V
3471	P
3501	V
3502	V
3503	V
3504	V
3505	P
3506	P
3507	F
3517	P
3518	P
3521	V
3539	F
3577	V
3584	V
3616	P
6334	F
6419	F
8002	F

[49 FR 10895, Mar. 22, 1984, as amended at 50 FR 10059, Mar. 13, 1985; 50 FR 27593, July 5, 1985; 50 FR 51395, Dec. 17, 1985; 51 FR 8681, Mar. 13, 1986; 51 FR 16692, May 6, 1986; 51 FR 45896, Dec. 23, 1986; 52 FR 34389, Sept. 11, 1987]

Subpart 553.2—Prescription of Forms

553.200 Scope of subpart.

This subpart relates to the use of certain GSA Forms not prescribed elsewhere in this regulation, or forms that may be mentioned elsewhere in connection with only some of the uses to which the form may be applied.

553.270 Forms containing representations and certifications, provisions, and clauses.

The GSA Forms reference in this GSAR 553.270 are for use on an optional basis. Unless otherwise indicated, the forms containing provision and clauses may either be physically included in the solicitation/contract, or may be incorporated therein by reference in accordance with GSAR 553.171.

[50 FR 10059, Mar. 13, 1985]

553.270-1 Representations and certifications.

(a) GSA Form 3503, Representations and Certifications, may be used as a part of all solicitations and contracts, except contracts for utilities and leases of real property. Until the form is revised, contracting officers must modify paragraph 9 of the form to include the July 1987 version of the FAR clauses at 52.214-2 and 52.215-6. The form may also be used for small purchases when Standard Form 33, Solicitation, Offer, and Award,, or Standard Form 1442, Solicitation, Offer, and Award, is used.

[52 FR 28828, Aug. 4, 1987]

553.270-2 Solicitation provisions.

(a) GSA Form 3501, Solicitation Provisions (Sealed bid), is for use in connection with all sealed bid solicitations. Until the form is revised, contracting officers must modify paragraph 1 of the form to include the July 1987 version of the FAR clause at 52.214-1.

(b) GSA Form 3502, Solicitation Provisions (Negotiated), is for use in connection with all negotiated procurements, including small purchases when offers are solicited by the use of SF 33 or SF 1442. Until the form is revised, contracting officers must modify paragraph 1 of the form to include the July 1987 version of the FAR clause at 52.215-5.

(c) GSA Form 3516, Solicitation Provisions (Acquisition of Leasehold Interests in Real Property), is for use in leases of real property.

[49 FR 10895, Mar. 22, 1984, as amended at 50 FR 10059, Mar. 13, 1985; 50 FR 51395, Dec. 17, 1985; 52 FR 28828, Aug. 4, 1987]

553.270-3 Contract clauses.

(a) GSA Form 2166, Service Contract Act of 1965 (as amended), is for use in connection with sealed bid and negotiated contracts for services to which the Act applies. Because the clause on this form must be included in solicitations/contracts in full text, the form may not be incorporated by reference.

(b) GSA Form 3504, Service Contract Clauses, is for use in connection with sealed bid and negotiated contracts for services, except small purchases.

(c) GSA Form 3505, Labor Standards (Construction Contract), is for use in connection with sealed bid and negotiated contracts subject to the Davis-Bacon and related Acts. Because the clauses on this form must be included in solicitations/contracts in full text, the form may not be incorporated by reference. Until the form is revised, contracting officers must modify paragraph 2 of the form to include the March 1986 version of FAR clause at 52.222-4.

(d) GSA Form 3506, Construction Contract Clauses, is for use in connection with all sealed bid and negotiated construction contracts, except small purchases.

(e) GSA Form 3507, Supply Contract Clauses, is for use in connection with sealed bid and negotiated contracts for supplies. However, because most of the clauses on the form also apply to contracts for the rental of personal property, the form may also be used for rental contracts.

(f) GSA Form 3517, General Clauses (Acquisition of Leasehold Interests in Real Property), is for use in leases of real property.

[50 FR 10059, Mar. 13, 1985, as amended at 50 FR 51395, Dec. 17, 1985; 51 FR 32656, Sept. 15, 1986; 51 FR 45895, Dec. 23, 1986; 52 FR 21057, June 4, 1987]

553.271 [Reserved]

553.272 Purchase/delivery orders.

Except as otherwise indicated, each of the following forms is designed for use as a purchase order (small purchases) with applicable provisions and clauses printed on the reverse of the form, or as a delivery order to place orders under established contracts.

(a) The GSA Form 300 or 300-1 (pin-feed format), Order for Supplies and Services, is used in accordance with the instructions at 553.370.300-I for making purchases payable through the National Electronic Accounting and Reporting (NEAR) System and for certifying receipt of supplies and services. This form may also be used in other situations, unless a specific form is prescribed for use. GSA Form 300-A or 300-A(1) (pin-feed format), Order for Supplies and Services (Continuation), is available for use with GSA Form 300.

(b) The GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order, is used to procure services and/or repairs of GSA fleet management vehicles.

(c) The GSA Form 3186, Order for Supplies or Services, is used to make purchases through the FSS-19 system.

(d) The GSA Form 8002, Motor Vehicle Delivery Order, is used to order fleet management vehicles. This form is not intended for use as a purchase order for small purchases and does not include provisions and clauses on the reverse.

[50 FR 51395, Dec. 17, 1985, as amended at 51 FR 45895, Dec. 23, 1986; 52 FR 47006, Dec. 11, 1987]

553.273 Receiving reports.

(a) GSA Form 3025 or 3025A (pin-feed format), Receiving Report, may be used in conjunction with the GSA Form 300 or 300-1 (pin-feed format), Order for Supplies and Services, when required by the instructions for use of the GSA-300 at 553.370-300-I. The GSA Form 3025 or 3025A may also be used when prescribed in GSA handbooks or other directives

(b) GSA Form 2877, Non-Depot Item Requisition/Order/Receiving Payment Record, is used to receive customer supply center items from sources other than government supply depots.

[51 FR 45896, Dec. 23, 1986, as amended at 52 FR 47007, Dec. 11, 1987]

§ 553.274 Solicitation cover page.

GSA Form 1602, Notice Concerning Solicitation, must be used by FSS Central Office and regional contracting offices and may be used by other offices to:

(a) Indicate the solicitation number;

(b) Describe the type of contract, the duration of the contract, and the identity of the supplies or services being procured;

(c) Direct the attention of prospective offerors to special requirements which, if overlooked, may result in rejection of the offer;

(d) Highlight significant changes from previous solicitations covering the same commodity or service; and

(e) Include other special notices, as appropriate.

[50 FR 51395, Dec. 17, 1985]

553.275 Contract summaries.

(a) To provide an abstract of pricing and other pertinent information applicable to requirements contracts for stock replenishment, contracting officers shall prepare GSA Form 1584, Contract Summary, in accordance with instructions in GSAR 553.370-1584-I. GSA Form 1584-A, Contract Summary—Continuation, shall be used as necessary. The completed form shall be duplicated and distributed as soon as possible after award to inventory managers, paying offices, quality assurance specialists, and other interested personnel, in accordance with distribution instructions established by the Federal Supply Service.

(b) Contract summaries (GSA Form 1584) may also be prepared in connection with nonstock contracts, if considered expedient.

[49 FR 10895, Mar. 22, 1984, as amended at 51 FR 45895, Dec. 23, 1986]

Subpart 553.3—Illustrations of Forms

Editorial Note: GSAR Forms are not published in the Code of Federal Regulations. For the convenience of the user, a list of forms appears at the end of this subpart.

553.300 Scope of subpart.

(a) This subpart contains illustrations of most form referenced in this GSAR, except standard forms that are illustrated in the Federal Acquisition Regulation (FAR).

(b) In some cases, detailed instructions regarding the completion of a form are included in conjunction with the illustration of the form. These instructions are identified by the addition of the suffix "I" following the subsection number.

553.301 Standard forms.

This section contains illustrations of standard forms that are referenced in this GSAR, but which are not illustrated in the FAR. Subsection numbers correspond with the number of the standard form being illustrated.

553.370 GSA forms.

This section contains illustrations of GSA forms referenced in this GSAR. Subsection numbers correspond with the number of the GSA form being illustrated.

[49 FR 10895, Mar. 22, 1984, as amended at 49 FR 26071, June 26, 1984]

Editorial Note: GSAR Forms are not published in the Code of Federal Regulations. For the convenience of the user, a list containing section numbers, form numbers and form titles appears below.

Sec.
553.301-2 Standard Form 2 U.S. Government Lease for Real Property.
553.301-2-B Standard Form 2-B, U.S. Government Lease for Real Property (Short Form).
553.370-19 GSA Form 19, Designation of Authorized Representative.
553.370-72 GSA Form 72, Contractor's Report of Order Received.
553.370-72-A GSA Form 72-A, Contractor's Report of Orders Received.
553.370-300 GSA Form 300, Order for Supplies or Services.
553.370-300-1 Instructions for using the GSA Form 300, Order for Supplies and Services.
553.370-300-A GSA Form 300-A, Order for Supplies or Services (Continuation).
553.370-387 GSA Form 387, Analysis of Values Statement (Leased Space).
553.370-434 GSA Form 434, Sample Record Sheet.
553.370-527 GSA Form 527, Contractor's Qualifications and Financial Information.
553.370-618-A GSA Form 618-A, Transmittal of Contract Award (Form Letter).
553.370-618-D GSA Form 618-D, Statement to be Submitted When Work is Performed Personnally.
553.370-1142 GSA Form 1142, Release of Claims.
553.370-1364 GSA Form 1364, Proposal to Lease Space.
553.370-1378 GSA Form 1378, Record of, and Receipt For, Bids and Responses.
553.370-1447 GSA Form 1447, Procurement Case Summary.
553.370-1458 GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase.
553.370-1535 GSA Form 1535, Recommendation for Award(s).
553.370-1535-A GSA Form 1535-A, Recommendation for Award(s) (Continuation).
553.370-1584 GSA Form 1584, Contract Summary.
553.370-1584-A GSA Form 1584-A, Contract Summary Continuation Sheet.
553.370-1584-I Instructions for completing GSA Form 1584, Contract Summary.
553.370-1602 GSA Form 1602, Notice Concerning Solicitation.
553.370-1678 GSA Form 1678, Status Report of Orders and Shipments.
553.370-1720 GSA Form 1720, Request for Release of Classified Information to U.S. Industry.
553.370-1766 GSA Form 1766, Structured Approach Profit/Fee Objective.
553.370-2010 GSA Form 2010, Small Purchase Tabulation Source List/Abstract.
553.370-2166 GSA Form 2166, Service Contract Act of 1965 (As Amended).
553.370-2419 GSA Form 2419, Certificate of Payment to Subcontractors and Suppliers.
553.370-2428 GSA Form 2428, Request for Authorization of Additional Classification(s), Rate(s), and Fringe Benefit(s).
553.370-2677 GSA Form 2677, Minority Contract Fact Sheet.
553.370-2689 GSA Form 2689, Procurement Not Set Aside.
553.370-2728 GSA Form 2728, Procurement Contract Register.
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553.370-2981 GSA Form 2981, Request for extension of bid acceptance time (Form letter).

553.370-3017 GSA Form 3017, Labor Standards Interview.

553.370-3025 GSA Form 3025, Receiving Report.

553.370-3077 GSA Form 3077, FY 19— Procurement Preference Program Goal Achievement.

553.370-3186 GSA Form 3186, Order for Supplies or Services.

553.370-3409 GSA Form 3409, Personal Qualification Statement for Appointment as Contracting Officer.

553.370-3410 GSA Form 3410, Request for Appointment.

533.370-3420 GSA Form 3420, Contract/Modification File Checklist.

553.370-3501 GSA Form 3501, Solicitation Provisions (Sealed Bid).

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553.370-3502 GSA Form 3502, Solicitation Provisions (Negotiated).

553.370-3503 GSA Form 3503, Representations and Certifications.

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553.370-3517 GSA Form 3517, General Clauses (Acquisition of Leasehold Interests in Real Property).

553.370-3518 GSA Form 3518, Representations and Certifications (Acquisition of Leasehold Interests in Real Property).

553.370-3521 GSA Form 3521, Blanket Purchase Agreement.

553.370-3577 GSA Form 3577, Notification of Contracting Award.

553.370-3584 GSA Form 3584, Checklist for Review of Subcontracting Plan.

553.370-6334 GSA Form 6334, Transmittal of Approved Samples of Items Under Contract.

553.370-6419 GSA Form 6419, Transmittal of Contract Award Data.

553.370-8002 GSA Form 8002, Motor Vehicle Delivery Order.

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 49 FR 10898, Mar. 22, 1984, unless otherwise noted.

570.000 Scope of part.

This part prescribes policies and procedures for the leasing of real property (space).

Subpart 570.1—General

570.101 Applicability.

(a) The requirements of this part apply to the acquisition of leasehold interests in real property.

(b) The requirements of this part do not apply to the acquisition of leasehold interests in real property by the power of eminent domain or donation.

(c) The requirements of this part do not apply to the acquisition of leasehold interests in bare or unimproved land.

(d) The GSAR applies to the acquisition of leasehold interests in real property only to the extent specified in this part and § 501.103(b).

[50 FR 27593, July 5, 1985; 50 FR 30274, July 25, 1985]

570.102 Definitions.

(a) "Acquisition" means the acquiring by lease with appropriated funds of an interest in improved real property for use by the Federal Government whether the space is already in existence or must be constructed. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, market survey, solicitation, award of lease, lease performance, lease administration, and those technical and management functions directly related to the process of fulfilling agency space needs by contract.

(b) "Contract" means lease.

(c) "Contractor" means lessor.

(d) "Fair Rental" means the amount of the rental which reasonably can be expected to be paid for the lease of real property as established by competition and/or by a value estimate based on accepted real property appraisal procedures.

(e) "Lease" or "leasehold interests in real property" means a conveyance to the Government of the right of exclusive possession of real property for a definite period of time by a landlord. It may include services provided by the landlord such as heating, ventilation, air conditioning, utilities, custodial services, and other related services furnished by the landlord.

(f) "Lessee" or "tenant" means the United States of America.

(g) "Lessor" or "landlord" means any individual, firm, partnership, trust, association, or other legal entity which leases property to the Government.

(h) "Rent and related services" means the consideration paid for the use of leased property plus the costs of operational services such as heat, light, and janitor services whether furnished by the lessor, the Government, or both.

(i) "Small business" means a concern including affiliates, which is organized for profit, is independently owned and operated, is not dominant in the field of leasing commercial real estate, and has annual average gross receipts of $10 million or less for the preceding three fiscal years.

(j) "Space" means the premises leased, or to be leased. The quantity of space is most often expressed in terms of square feet.

(k) "Solicitation for Offers (SFO)" means invitation for bids in sealed bidding or request for proposals in negotiations.

(l) "Substantially as follows" or "substantially the same as", when used in the prescription of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accomodate requirements that are peculiar to an individual acquisition; provided, that the variation includes the salient features of the FAR/GSAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR/GSAR provision or clause or related coverage on the subject matter.

[50 FR 27593, July 5, 1985]

570.103 Authority to lease.

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(h)(1)), as amended, and Section 1 of the Reorganization Plan No. 18 of

1950 (40 U.S.C. 490 Note) authorize the Administrator of General Services to acquire leasehold interests in real property for use by Federal agencies. The authority is limited to leases for buildings and improvements that do not bind the Government for periods in excess of 20 years.

570.104 Contracting officers.

(a) Contracting officers, acting within the scope of their appointments, are the exclusive GSA agents to enter into and administer leases on behalf of the Government in accordance with agency procedures.

(b) Each contracting officer is responsible for performing, or having performed, all administrative actions necessary for effective contracting.

570.105 Competition.

(a) The competition requirements of FAR Part 6 and GSAR Part 506 apply to the acquisition of leasehold interest in real property.

(b) Contracts involving the acquisition of leasehold interests in real property shall be awarded through the use of competitive procedures (sealed bidding or negotiation), unless the use of other than full and open competition is permitted by one of the exceptions in FAR 6.302.

(c) The acquisitions of leased space through other than full and open competition must be held to the smallest number practicable and be justified in writing and approved in accordance with FAR 6.303, 6.304, and GSAR 506.304.

[50 FR 27593, July 5, 1985]

570.106 Methods of contracting.

(a) *Sealed bidding.* The use of sealed bidding in connection with the leasing of real property is generally not feasible, unless a building site has been preselected and a building is to be constructed on the site in accordance with Government furnished plans and specifications for lease to the Government. When using sealed bidding procedures, the provisions of FAR Part 14 and GSAR Part 514 must be followed.

(b) *Negotiation.* The negotiated method of contracting is normally the best suited for acquiring space through a lease contract because it is necessary to conduct discussions with responding offerors about their proposals and factors other than price must be considered in making the award.

[50 FR 27594, July 5, 1985]

Subpart 570.2—Special Aspects of Contracting for Leasehold Interests of 10,000 Square Feet or More

570.201 Market surveys.

In order to promote full and open competition with due regard for the nature of the space to be acquired, a market survey must be conducted for all proposed acquisitions of space. The survey may be conducted by Government employees or by contractor personnel. The market survey must include—

(a) Solicitation of information on the availability of space through the use of circulars or newspaper advertisements and consultations (telephonically or in person) with realtors, brokers, owners, and others, as appropriate.

(b) An inspection of all offered and other available locations that appear to meet the minimum requirements regarding quantity, quality, availability, and probable cost.

(c) Documentation of the survey findings for each location inspected, including the reasons for unacceptability and identity of the interested parties that should be forwarded a solicitation for offers.

[50 FR 27594, July 5, 1985]

570.202 Advertising.

(a) Government space requirements for blocks of space of 10,000 or more square feet must be publicized in local newspapers and/or periodicals unless exempt under FAR 5.202 or GSAR 505.202. Requirements for blocks of space of less than 10,000 square feet may be publicized when the contracting officer determines such advertising will serve to promote competition.

(b) When the Government proposes the acquisition of leasehold interests in a building to be constructed on a preselected site, the proposed acquisition shall be publicized (synopsized) in the Commerce Business Daily (CBD) at least 15 days prior to issuance of the SFO.

(c) For further information on advertising and synopsizing refer to FAR Part 5 and Part 505 of this regulation.

[50 FR 27594, July 5, 1985]

570.203 Solicitation for offers (SFO).

(a) The SFO is the basis for the entire lease negotiation process and must be made a part of the lease. SFO's must contain the information necessary to enable the prospective offeror to prepare a proposal. Each solicitation, as a minimum, must—

(1) Be in writing.

(2) Contain a description of the minimum requirements of the Government, including—

(i) A description of the required space.

(ii) Specifications. The type of specification shall depend upon the nature of the space needs of the agency and the market available to satisfy such needs. Specifications may be stated in terms of function, performance, or design requirements. The specification shall be drafted to promote full and open competition and shall include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(iii) Any special requirements.

(iv) A delivery schedule.

(3) Describe the method used to measure space.

(4) Specify a date and place for the submission of offers. (Any extension of time to one offeror shall be granted uniformly to all offerors.)

(5) Advise that offers will be evaluated based only on the initial lease term, unless otherwise specified.

(6) Require offers to be submitted on an annual rate per square foot basis for the amount of space offered.

(7) Identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and state the relative importance the Government places on those evaluation factors and subfactors. Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation must inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors.

(i) Offers will be reduced to an annual rental rate per square foot for the amount of space offered.

(ii) When different types of space are solicited, the lowest offer as to price will be determined on the basis of the composite square foot rate per year for the total amount of space offered.

(iii) When lump sum payments for initial tenant alterations are solicited, the lowest offer as to price will be determined by adding to the annual square foot rate (or the composite square foot rate) the result of the lump sum amount amortized over the firm term of the lease (i.e., divided by number of years in the term) divided by the square footage offered.

(iv) The factors that will be considered in evaluating proposals should be tailored to each acquisition and include only those factors that will have an impact on the award decision. The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of the contracting officer. However, price or cost to the Government must be included as an evaluation factor in every case. Other evaluation factors that may apply to a particular acquisition are the availability of public transportation, the availability of adequate food service within a reasonable distance, the use of renewable energy, and any other relevant factors.

(8) Include provisions and clauses substantially the same as those listed on the matrix at GSAR 552.370 when the prescription for use of the provision or clause requires its use. The omission of any provision or clause when its prescription requires its use constitutes a deviation which must be approved in accordance with the procedures in Subpart 501.4. Approval may be granted to deviate from provisions or clauses that are mandated by statute (e.g. FAR 52.203-5, Covenant Against Contingent Fees; FAR 52.203-1, Officials Not to Benefit, FAR 52.215-1, Examination of Records by

the Comptroller General, etc.) in order to modify the language of the provision or clause. However, deviations to omit such provisions and clauses may not be granted, unless the statute provides for waiving the requirements of the clause.

(9) Include appropriate forms as prescribed in Subpart 570.8.

(b) The initial release of SFO's must be made to all prospective offerors at the same time.

(c) Copies of each SFO must be maintained at the issuing office until an award has been made. A reasonable number should be duplicated and made available upon request to individuals and firms having an interest.

[49 FR 10898, Mar. 22, 1984, as amended at 50 FR 27594, July 5, 1985]

570.204 Changes to SFO's.

(a) When changes occur in the Government's requirements (either before or after receipt of proposals), the solicitation shall be amended in writing.

(b) When timeliness is essential, oral information regarding modifications may be given if—

(1) The modifications are not complex;

(2) A record is made of the oral information;

(3) All firms to be notified are given notice, on the same day if possible; and

(4) The oral information is promptly confirmed by a written amendment.

(c) When modifications in space requirements occur, the following procedures apply—

(1) If proposals are not yet due, amendments shall be sent to all firms solicited.

(2) If the time for receipt of proposals has passed, but proposals have not yet been evaluated, the amendments shall be sent to the concerns that have submitted offers.

(3) If a modification is so substantial that it requires a complete revision of the solicitation, the solicitation shall be canceled and a new solicitation issued. New solicitations shall be issued to all concerns solicited originally, any concerns added to the original mailing list, and any other qualified concerns.

§ 570.205 Negotiations.

(a) Negotiations will be conducted with all offerors that are within the competitive range. The contracting officer shall determine the competitive range on the basis of cost and other factors that were stated in the solicitation and shall include in the competitive range all offers that have a reasonable chance of being selected for award. When there is doubt as to whether an offer is in the competitive range, the offer should be included.

(b) The content and extent of the negotiations is a matter of the contracting officer's judgement based on the particular facts of each acquisition. The contracting officer shall—

(1) Control all discussions;

(2) Advise the offeror of deficiencies in its offer so that the offeror is given an opportunity to satisfy the Government's requirements;

(3) Attempt to resolve any uncertainties concerning the offer;

(4) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process; and

(5) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its offer that may result from the discussion.

(c) No indication may be given to any offeror of a price which must be met since such practice constitutes an auction technique which is to be avoided. Likewise, no offeror should be advised of his relative standing with other offerors.

(d) After receipt of offers, no information regarding the number or identity of the offerors participating in the negotiation may be made available to anyone whose official duties do not require such knowledge.

(e) Negotiations must be closed by establishing a date and time for closing of negotiations and requesting in writing that offerors submit a "best and final offer" by that date.

(f) Negotiations may not be conducted after the closing date for best and final offers unless negotiations are reopened with all offerors in the competitive range.

(g) Negotiations must be confidential and reflect complete agreement on all items and conditions of the lease contract. Information regarding the transaction will not be announced or made available until after the contract is awarded.

(h) A written negotiation record must be placed in the lease file.

[50 FR 27595, July 5, 1985]

570.206 Evaluating offers.

(a) An abstract of final offers must be prepared to aid in the analysis of offers received.

(b) Offers will be evaluated on the basis of the lowest annual price per square foot cost to the Government and other award factors as stated in the SFO.

[49 FR 10898, Mar. 22, 1984, as amended at 50 FR 27595, July 5, 1985]

570.207 Late offers, modifications of offers, and withdrawals of offers.

Offers received after the date for best and final offers will be considered in accordance with the provisions of FAR 15.412.

570.208 Preaward requirements.

Before making a lease award, the following actions are required—

(a) *Cost or pricing data.* (1) Cost and pricing data are required under the circumstances described in FAR 15.804-2.

(2) The exemptions from and waivers of submission of certified cost or pricing data are outlined in FAR 15.804-3. The competition exemption applies when adequate price competition, as defined in FAR 15.804-3(b), is obtained. The market price exemption from submission cost or pricing data may be applied to proposed leases where there is evidence that the price is based on an established market price for similar space leased to the general public. A market survey and an appraisal conducted in accordance with accepted real property appraisal procedures may be used as evidence to establish the market price. The contracting officer may grant an exemption and need not require the prospective lessor submit a Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when there is evidence, before solicitation, that there is an acceptable established market price (see FAR 15.804-3(e)(3)).

(3) In exceptional cases, the requirement for submission of certified cost or pricing data may be waived in accordance with FAR 15.804-3(i) and GSAR 515.804-3.

(4) When certified cost or pricing data are required, the contracting officer shall follow the procedural requirements in FAR 15.804-6.

(5) In the event the proposed lessor refuses to provide the data, when required, the contracting officer shall follow the procedures in GSAR 515.804-70.

(b) *Appraisal.* When the annual net rental exceeds $2,000, an appraisal of the fair rental must be obtained for the property to be leased.

(c) *Proposal evaluation.* (1) The contracting officer shall use cost or price analysis to evaluate the offers in accordance with the general guidance provided in FAR 15.805. The contracting officer shall document the lease file to demonstrate that the fair rental value has been properly established and show how it relates to the proposed contract rental.

(2) The lease file must also document the evaluation of other award factors listed in the solicitation. The file should include the basis for evaluation, an analysis of each offer, and a summary of findings.

(d) *Financial responsibility.* (1) A determination must be made that the prospective offeror is financially responsible with respect to the lease being considered. The contracting officer's signature on the contract is deemed to be an affirmative determination. The market survey will constitute adequate support for the determination, unless new construction is involved.

(2) When the offer involves new construction, the contracting officer shall request the Credit and Finance Branch, Region 2, to evaluate the offeror's financial status, unless the offeror has been evaluated and found satisfactory within the past year. The

contracting officer shall consider the information provided by the Credit and Finance Branch and make a determination as to the lessor's financial responsibility.

(3) In other cases where the contracting officer has reason to question the lessor's financial ability to perform, a responsibility check must be requested from the Credit and Finance Branch.

(4) All documents generated as a result of financial responsibility checks must be placed in the permanent lease file.

(e) In order to comply with the warranty requirement of 41 U.S.C. 254(a) concerning contingent fees, the requirements of FAR Subpart 3.4 and Subpart 503.4 must be followed.

(f) Applicable certifications as prescribed in § 552.370 shall be reviewed for compliance with regulations.

(g) Leases must be cleared in accordance with the requirements of GSA Order, Contract Clearance (APD 2800.1B).

[50 FR 27595, July 5, 1985]

570.209 Award.

(a) An award will be made to the responsible offeror whose proposal is most advantageous to the Government considering price and other factors included in the solicitation.

(b) Award will be made in writing within the time frame specified in the SFO. If an award cannot be made within that time, the contracting officer shall request in writing from each offeror an extension of the acceptance period through a specific date.

(c) Unsuccessful offerors will be notified in writing, of the award.

(d) All proposals received in response to a solicitation may be rejected if the head of the contracting activity determines that action is in the public interest. This authority may be redelegated.

[49 FR 10898, Mar. 22, 1984, as amended at 50 FR 27595, July 5, 1985]

570.210 Inspection and certification.

A Government representative shall—

(a) Inspect the space and

(b) Certify that the space is in substantial compliance with the Government's requirements and specifications prior to occupancy.

[49 FR 10898, Mar. 22, 1984, as amended at 50 FR 27596, July 5, 1985]

Subpart 570.3—Special Aspects of Contracting for Leasehold Interests in Real Property

SOURCE: 50 FR 27596, July 5, 1985, unless otherwise noted.

570.300 Scope of subpart.

This subpart prescribes policies and procedures for the acquisition of leasehold interests in real property when blocks of space of less than 10,000 square feet are required.

570.301 Definitions.

"Small lease" means an acquisition of leasehold interest in real property involving blocks of space of less than 10,000 square feet using the procedures prescribed in this subpart.

"Small lease procedure" means the method prescribed in this subpart for making small leases using a simplified process and a short form lease contract.

570.302 Purpose.

The purpose of this subpart is to prescribe simplified procedures for small leases in order to reduce administrative costs while providing for the efficient and economical acquisition of leasehold interests in real property.

570.303 Policy.

The procedures prescribed in this subpart should be used to the maximum extent practicable for acquisition of leasehold interests in real property involving blocks of space aggregating less than 10,000 square feet.

570.304 Procedures.

570.304-1 General.

(a) The small lease procedures contemplate the contracting officer or a representative will visit the area where space is required to—

(1) Locate and inspect buildings where space may be available to satisfy the Government's requirements;

(2) Present a proposed short form lease to prospective offerors together with a notice identifying all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and stating the relative importance the Government places on the evaluation factors or subfactors;

(3) Ask the prospective offerors to review the proposed lease and provide an offer;

(4) Negotiate directly with the offerors while on location; and

(5) Award the lease.

(b) This procedure does not eliminate the requirements for legal review, contract clearance, etc. if the lease would be subject to such requirements based on the amount of the transaction or the nature of the agreement.

570.304-2 Market survey.

A market survey must be conducted in accordance with GSAR 570.201. The market survey is a crucial aspect of the small lease procedure.

570.304-3 Advertising.

Requirements may be publicized in local newspapers and/or periodicals when the contracting officer determines such advertising will serve to promote competition. For further information on advertising, refer to FAR Part 5 and Part 505.

570.304-4 Soliciting offers.

(a) Offers must be solicited by presenting each prospective offeror with a proposed short form lease and a notice identifying all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and stating the relative importance the Government places on the evaluation factors or subfactors.

(b) The proposed lease must describe the Governments requirements and include applicable provisions and contract clauses substantially the same as those listed on the matrix at GSAR 552.370.

570.304-5 Negotiation and award.

The policies and procedures in GSAR 570.205, GSAR 570.208 and GSAR 570.209 must be followed.

570.304-6 Inspection and certification.

A Government representative shall inspect the space and certify that the space is in substantial compliance with the Government's requirements and specifications prior to occupancy.

Subpart 570.4—Mistakes, Protests, Miscellaneous

SOURCE: 50 FR 27596, July 5, 1985, unless otherwise noted.

570.401 Disclosure of mistakes after award.

When a mistake in a lessor's offer is not discovered until after award, the mistake must be handled as provided in FAR 14.406-4 and Subpart 514.4.

570.402 Protests.

Protests regarding the award of lease contracts must be handled as provided in FAR Subpart 33.1 and GSAR Subpart 533.1.

570.403 Awards to Federal employees.

(a) Offers to lease space received from officers or employees of the Government must be handled as provided in FAR Subpart 3.6.

(b) The head of the contracting activity may authorize an exception under the circumstances in FAR 3.602.

Subpart 570.5—Special Aspects of Contracting for Continued Occupancy in Leased Space

SOURCE: 50 FR 27596, July 5, 1985, unless otherwise noted.

570.501 Renewal options.

(a) *Exercise of options.* Before exercising an option, the provisions of GSAR Part 517 must be followed.

(b) *Notification.* When a contracting officer determines that it is in the best interest of the Government to continue to lease a property, the lessor must be notified within the time frame required by the lease.

(c) *Market survey.* When the right to renew a lease exists, a renewal must be based on a market survey and other applicable considerations. Surveys should focus on the prevailing rental rates for comparable space.

(d) *Reappraisal.* The original appraisal must be updated (e.g., by memorandum) or a new appraisal performed when the annual net rental exceeds $2,000.

(e) *Cancellation.* When a determination is made that a lease which has an automatic renewal clause is no longer required, the lessor will be notified in writing that the lease has been canceled.

570.502 Succeeding leases.

(a) *General.* Succeeding leases for the continued occupancy of space in a building may be entered into when a cost-benefit analysis has been conducted and the results indicate that an award to an offeror other than the present lessor would result in substantial relocation and duplication costs to the Government that are not expected to be recovered through competition.

(b) *Procedure*—(1) *Advertising.* The contracting officer shall publish a notice in local newspapers and/or periodicals when blocks of space of 10,000 or more square feet are involved. The notice should normally (i) indicate the Government's lease is expiring, (ii) describe the agency's needs in terms of type and quantity of space, (iii) indicate the Government is interested in considering alternative space if economically advantageous, (iv) advise prospective offerors that the Government will consider the cost of moving, alterations, etc., when deciding whether it should relocate, and (v) tell interested parties who to contact if they are interested in providing space to the Government.

(2) *Market Survey.* A market survey shall be conducted in accordance with GSAR 570.201.

(3) *Competition determination.* (i) If no potential acceptable locations are identified through the notice or the market survey, the contracting officer may prepare a justification to negotiate directly with the present lessor. The justification must be prepared and approved in accordance with FAR 6.3 and GSAR 506.3 and should fully document the efforts to locate alternative sources.

(ii) If potential acceptable locations are identified through the advertisement or market survey and relocation costs (including estimated moving costs, telecommunications costs, and the estimated cost of alterations, amortized over the firm term of the lease) are not significant enough to preclude recovery of such costs through competition, the contracting officer may proceed to develop a formal SFO and negotiate with all interested parties in accordance with the procedures in GSAR 570.2 or GSAR 570.3.

(iii) If potential acceptable locations are identified through the advertisement or market survey and substantial relocation costs are involved, the contracting officer shall conduct a cost-benefit analysis to determine whether the duplication of costs to the Government could be recovered through competition. The cost-benefit analysis must give consideration to the prices of other potentially available properties, relocation costs, and other appropriate considerations. The prices for other potentially available properties must be established by requesting the prospective offeror to provide an informational quotation for standard space for comparison purposes. The prices quoted for standard space will be adjusted by the Government for special requirements. A formal solicitation for offers (SFO) is not required for the purpose of obtaining the informational quotation. The contracting officer shall provide a general description of the Government's needs when requesting informational quotations. If oral quotations are provided, the record must be documented to reflect the following information, as a minimum: the name and address of the firm solicited, the name of the firm's representative providing the quote, the price(s) quote, the description of the space and services for which the quote is provided, the name of the Government employee soliciting the quotation, and the date of the conversation. The informational quotations shall be compared to the present lessor's price, adjusted to reflect the anticipated price for a succeeding lease. Based on the results of the cost-benefit analysis, the contracting officer will—

(A) Prepare a justification for approval in accordance with FAR 6.3 and

GSAR 506.3 to support the determination to negotiate with the present lessor for continued occupancy because it is likely that award to any other offeror would result in substantial duplication of costs to the Government that are not expected to be recovered through competition, or

(B) Develop a formal SFO and negotiate with all interested parties in accordance with the procedures in Subpart 570.2 or 570.3.

[50 FR 27596, July 5, 1985; 50 FR 30274, July 25, 1985]

570.503 Expansion requests.

(a) When the expansion space needed is within the general scope of the lease, the space may be acquired through a modification to the lease.

(b) When the expansion space needed is outside the general scope of the lease, the contracting officer must determine whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to satisfy the requirement through relocation. A market survey shall be conducted to determine whether suitable alternate locations are available. If the market survey reveals alternate locations which can satisfy the total requirement, a cost-benefit analysis shall be performed to determine whether it is in the Government's best interest to relocate. This analysis may include—

(1) The cost of the alternate space compared to the cost of expanding at the existing location,

(2) The cost of moving,

(3) The cost of duplicating existing improvements, and

(4) The cost of the unexpired portion of the firm term lease (unless a termination is possible, in which case the actual cost of such an action should be used).

(c) If no suitable alternative location is available and the cost of the space exceeds $25,000, a justification may be prepared for approval in accordance with FAR 6.3 and GSAR 506.3 in order to negotiate a Supplemental Lease Agreement to provide expansion space, provided the original lease term is not extended. When the cost is $25,000 or less, the contracting officer must prepare the justification for inclusion in the file.

570.504 Superseding leases.

(a) Consideration should be given to the execution of a superseding lease which would replace the existing lease when the changes or modifications to the space contemplated are so numerous or detailed as to cause complications, or would substantially change the present lease.

(b) The justification and approval requirements in FAR 6.3 and GSAR 506.3 must be complied with before negotiating a superseding lease if the amount of the lease for the firm term exceeds $25,000. When the cost is $25,000 or less, the contracting officer must prepare a justification for inclusion in the file.

570.505 Lease extensions.

(a) The justification and approval requirements in FAR Subpart 6.3 and GSAR Subpart 506.3 must be complied with before negotiating a Supplemental Lease Agreement exceeding $25,000 to extend the term of the lease to provide for continued occupancy on a short term basis (usually not to exceed 1 year). For extensions of $25,000 or less the contracting officer must prepare the justification for inclusion in the contract file.

(b) FAR 6.302-1 provides for contracting without providing for full and open competition when the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the needs of the agency. This authority may be used to extend the term of a lease by supplemental agreement in situations such as the following:

(1) When the agency occupying the leased space is scheduled to move into other Federally controlled space but unexpected delays are encountered in preparing the new space for occupancy.

(2) When unexpected delays which are outside of GSA's control (i.e., protests, etc.) are encountered in acquiring replacement space.

(3) When various agencies occupying leased space are being consolidated

and it is necessary to extend the terms of some leases to establish a common expiration date.

Subpart 570.6—Special Aspects of Contracting for Lease Alterations

SOURCE: 50 FR 27598, July 5, 1985, unless otherwise noted.

570.600 Scope of subpart.

This subpart prescribes policies and procedures for contracting for alterations of real property leased by GSA.

570.601 General.

(a) Although the Government generally has a contractual right to alter the space leased, normally most alterations are acquired through a modification to the lease because they fall within the general scope of the lease and it is in the Government's interest to acquire the alterations from the lessor.

(b) As the need for alterations arise during the term of a lease contract, the contracting officer must examine each project and make a determination as to whether the alterations fall within the general scope of the lease and may be acquired through a modification to the lease. The primary test is whether the work should be regarded as fairly and reasonably an inseparable part of the lease requirement originally contracted for. If the alterations are outside the general socpe, the contracting officer must make a decision to acquire the alterations through a separate contract, through a Supplemental Lease Agreement, or to request the work be performed by Federal employees.

570.602 Alterations by the Lessor.

570.602-1 Justifications and approval requirements.

(a) The justification and approval requirements in FAR Subparts 6.3 and GSAR 506.3 must be complied with before negotiating directly with the lessor for any alteration project exceeding $25,000 which is outside the general scope of the lease contract.

(b) Before negotiating directly with the lessor for any alteration project of $25,000 or less, which is outside the general scope of the lease, the contracting officer shall document, in writing, the reasons for the absence of competition.

570.602-2 Procedures.

(a) *Scope of work.* A scope of work must be prepared for all alteration projects.

(b) *Independent Government estimate.*

An independent Government estimate must be prepared for all alteration projects, including changes to alteration agreements with lessors.

(c) *Request for proposal.* (1) The lessor shall be provided with a scope of work, including any plans and specifications which have been developed, and shall be requested to submit a proposal. The request for proposal should indicate whether progress payments will be made and provide for retainage, when appropriate.

(2) The proposal shall be requested to be submitted in such detail that a cost or price analysis can be made.

(3) The requirements for the submission of certified cost or pricing data outlined in FAR 15.804-2 apply to alteration projects over $100,000. The procedural requirements at FAR 15.804-6 must be followed when requesting cost and pricing data. Exemptions from or waivers to submission of certified cost or pricing data must be processed in accordance with the requirements of FAR 15.804-3 and GSAR 515.804-3. If the lease does not include the clauses at FAR 52.215-22 and 52.215-24 or the clauses at FAR 52.215-23 and 52.215-25, the modification to the lease for the alterations must add the clauses at FAR 52.215-23 and 52.215-25 if cost and pricing data is submitted.

(d) *Audits.* Unless the cost or pricing data requirement is exempt or waived in accordance with FAR 15.804-3 and GSAR 515.804-3, an audit must be requested for negotiated alterations to be performed during the term of the lease which exceed $500,000. Initial space alterations are considered in the award of the lease contract. Therefore, when the lease is exempted from the requirement for submission of cost or pricing data, the initial space alterations fall under that exemption.

(e) *Evaluation of proposals.* (1) Determine whether the proposal will meet the Government's requirements.

(2) Analyze cost as compared to the independent estimate and the audit.

(3) Analyze profit in accordance with FAR Subpart 15.9 if the project exceeds $25,000.

(4) Document analysis leading to negotiation objectives developed from (1) through (3) of this paragraph.

(f) *Price negotiations.* (1) The contracting officer is responsible for exercising sound judgment and may make reasonable compromises as necessary.

(2) The negotiated price should provide the lessor with the greatest incentive for efficient and economical performance.

(3) Negotiations shall be documented by a price negotiation memorandum.

(g) *Award.* Alterations may be procured using the GSA Form 276, Supplemental Lease Agreement, or the GSA Form 300, Order for Supplies or Services (alteration project of $25,000 or less) provided a reference is made to the lease and the provisions of Section 332 of the Economy Act of June 30, 1932, (47 Stat. 412), as amended, are met.

(h) *Inspection and payment.* Final payment for alterations shall not be made until the work is—

(1) Inspected by a qualified Government employee or independent Government contractor, and

(2) Certified as completed in a satisfactory manner.

[50 FR 27598, July 5, 1985; 50 FR 30274, July 25, 1985]

570.603 Alterations by the Government.

When the Government elects to exercise its rights to make the alterations rather than contract directly with the lessor, the work may be performed by Federal employees or may be contracted out using all of the standard contracting procedures that would apply to a construction contract if the work were to be performed on Federal property. If the Government decides to contract for the work, the lessor, as well as all other prospective contractors, should be invited to submit an offer for the project.

Subpart 570.7—Solicitation Provisions and Contract Clauses

Source: 50 FR 27598, July 5, 1985, unless otherwise noted.

570.701 Solicitation provisions.

570.701-1 Preparation of offers.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270-1, Preparation of Offers, in solicitations for leasehold interests in real property.

570.701-2 Explanation to prospective offerors.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270-2, Explanation to Prospective Offerors, in solicitations for leasehold interests in real property.

570.701-3 Late submissions, modifications, and withdrawals of offers.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270-3, Late Submissions, Modifications, and Withdrawals of Offers, in solicitations for leasehold interests in real property.

570.701-4 Historic preference.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270-4, Historic Preference, in solicitations for leasehold interests in real property when the market survey indicates that space is available in both historic and non-historic buildings.

570.701-5 Lease award.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270-5, Lease Award, in solicitations for leasehold interests in real property.

570.701-6 Parties to execute lease.

The contracting officer shall insert a provision substantially the same as the provision at GSAR 552.270-6, Parties to Execute Lease, in solicitations of leasehold interests in real property.

570.701-7—570.701-9 [Reserved]

570.702 Contract clauses.

570.702-1 Definitions.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-10, Definitions, in solicitations and contracts for leasehold interests in real property.

570.702-2 Subletting the premises.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-11, Subletting the Premises, in solicitations and contracts for leasehold interests in real property.

570.702-3 Maintenance of premises.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-12, Maintenance of premises, in solicitations and contracts for leasehold interests in real property.

570.702-4 Damage by fire or other casualty.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.207-13, Damage by Fire or Other Casualty, in solicitations and contracts for leasehold interests in real property.

570.702-5 Condition report.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-14, Condition Report, in solicitations and contracts for leasehold interests in real property.

570.702-6 Applicable codes and ordinances.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-15, Applicable Codes and Ordinances, in solicitations and contracts for leasehold interests in real property.

570.702-7 Inspection of premises.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-16, Inspection of Premises, in solicitations and contracts for leasehold interests in real property.

570.702-8 Failure in performance.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-17, Failure in Performance, in solicitations and contracts for leasehold interests in real property.

570.702-9 Lessor's successors.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-18, Lessor's Successors, in solicitations and contracts for lease-hold interests in real property.

570.702-10 Alterations.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-19, Alterations, in solicitations and contracts for leasehold interests in real property.

570.702-11 Proposals for adjustment.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-20, Proposals for Adjustment, in solicitations and contracts for leasehold interests in real property. If the lease is for 10,000 square feet or more, the contracting officer shall use the clause with its Alternate I.

570.702-12 Changes.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-21, Changes, in solicitations and contracts for leasehold interests in real property.

570.702-13 Liquidated damages.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-22, Liquidated Damages, in solicitations and contracts for leasehold interests in real property when there is a critical requirement that the delivery date be met and an actual cost cannot be established for the loss to the Government resulting from late delivery.

570.702-14 Operating costs.

If the contracting officer determines operating cost escalation is necessary, a clause substantially the same as the clause at GSAR 552.270-23, Operating Costs, must be included in solicitations and contracts for leasehold interests in real property.

570.702-15 Tax adjustment.

If the contracting officer determines tax escalation is necessary, a clause substantially the same as the clause at GSAR 552.270-24, Tax Adjustment, must be included in solicitations and contracts for leasehold interests in real property.

570.702-16 Adjustment for vacant premises.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-25, Adjustment for Vacant Premises, in solicitations and contracts for leasehold interests in real property.

570.702-17 If minimum not delivered.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-26, If Minimum Not Delivered, in solicitations and contracts for leasehold interests in real property.

570.702-18 Delivery and condition.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-27, Delivery and Condition, in solicitations and contracts for leasehold interests in real property.

570.702-19 Time extensions.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-28, Time Extensions, in solicitations and contracts for leasehold interests in real property.

570.702-20 Termination for default.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-29, Termination for Default, in solicitations and contracts for leasehold interests in real property.

570.702-21 Progressive occupancy.

The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.270-30, Progressive Occupancy, in solicitations and contracts for leasehold interests in real property.

Subpart 570.8—Forms Used for Acquisition of Leasehold Interests in Real Property

570.800 Scope of subpart.

This subpart sets further requirements for the use of forms in contracting for leasehold interests in real property.

570.801 Standard Forms.

(a) Standard Form 2, U.S. Government Lease for Real Property, shall be used to award leases of 10,000 square feet or more. Its use for leases of less than 10,000 square feet is optional.

(b) Page 1 of the standard Form 2-B, U.S. Government Lease for Real Property (Short Form), may be used to award leases for less than 10,000 square feet. Page 2 of the form should not be used because the clauses are obsolete.

[49 FR 10898, Mar. 22, 1984, as amended at 50 FR 27599, July 5, 1985]

570.802 GSA forms.

(a) GSA Form 276, Supplemental Lease Agreement, should be used to amend existing leases which involve the acquisition of additional space or partial release of space, revisions in the terms of a lease, rental payments, payments for overtime services, restoration settlements, and alterations.

(b) GSA Form 387, Analysis of Values Statement, should be used to demonstrate that the fair rent value of the leased space is proper.

(c) GSA Form 1364, Proposal To Lease Space To The United States of America, may be used to obtain offers from prospective offers.

(d) GSA Form 3516, Solicitation Provisions, should be included as a part of all solicitations for the acquisition of leasehold interests in real property.

(e) GSA Form 3517, General Clauses, should be included as a part of all solicitations and contracts for the acquisition of leasehold interests in real property.

(f) GSA Form 3518, Representations and Certifications, should be included as a part of all solicitations for the acquisition of leasehold interest in real property.

[50 FR 27600, July 5, 1985]

Appendix A to Chapter 5—Contracting Office Assignment Codes

NOTE: Appendix A does not appear in the Code of Federal Regulations.

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AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26159, July 11, 1988, unless otherwise noted.

601.000 Scope of part.

This part describes the Department of State Acquisition Regulation (DOSAR) in terms of establishment, relationship to the Federal Acquisition Regulation (FAR), arrangement, applicability, and deviation procedures. Acquisition procedures are integrated so as to provide a complete, logical, and comprehensive publication.

Subpart 601.2—Administration

601.201 Maintenance of the FAR.

601.201-1 The two councils.

The Office of the Procurement Executive represents the Department of State (DOS) on the Civilian Agency Acquisition Council. The Procurement Executive shall appoint said representative for this purpose. The Office of the Procurement Executive is responsible for coordinating with all interested DOS elements proposed FAR revisions and for advocating FAR revisions sought by the Department.

Subpart 601.3—Agency Acquisition Regulations

601.301 Policy.

(a) The Assistant Secretary for Administration is the agency head for the purposes of FAR 1.301. Under Delegation of Authority No. 120-3 (51 FR 16768, May 6, 1986), the Assistant Secretary for Administration redelegated to the Procurement Executive the authority to prescribe, promulgate, and amend DOS acquisition policies, rules, and regulations.

(b) The Department of State Acquisition Regulation (DOSAR) is prescribed under the authority of 22 U.S.C. 2658 and 40 U.S.C. 486(c) (Title II, Chapter 288, section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended).

(c) The DOSAR implements and supplements the FAR. Deviations, as defined in FAR 1.401, are processed in accordance with FAR Subpart 1.4 and Subpart 601.4.

601.302 Limitations.

(a) The FAR and the DOSAR apply to all DOS acquisitions of personal property and services, including construction, both within and outside the United States, unless expressly excluded by this subpart, or exempt from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 474(7)), or undertaken pursuant to section 208 of the

State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308).

(b) At posts where Joint Administrative Offices have been formed, the FAR and the DOSAR apply to all Agency for International Development (AID) administrative and technical support acquisitions, except in those areas which have been exempted by the cognizant administrative office.

601.303 Publication and codification.

(a) The DOSAR is issued as Chapter 6 of Title 48, Code of Federal Regulations. The DOSAR is established as Chapter 6 of the Federal Acquisition Regulations System. The DOSAR is divided into the same parts, subparts, sections, subsections, and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself there will be no corresponding DOSAR coverage. Where the DOSAR implements a specific part, subpart, section, or subsection of the FAR, the DOSAR coverage is numbered and titled to correspond to the appropriate FAR number and title, except that the DOSAR number will include a 6 or 60 such that there will always be three numbers to the left of the decimal. For example, the DOSAR implementation of FAR 14.1 is shown as 614.1 and the DOSAR implementation of FAR 1.301 is shown as 601.301. Materials that supplement the FAR are assigned the numbers 70 and up. For example, DOSAR requires additional definitions than those used in FAR; this supplementary material is provided in 602.101-70.

(b) The DOSAR and its revisions are published in the Federal Register and in the Code of Federal Regulations, both of which may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(c)(1) The DOSAR shall be referenced in the same manner as described at FAR 1.104-2(c). Using the DOSAR coverage at 609.407-3(a) as a typical illustration, reference to the—

(i) Part would be "DOSAR Part 609" outside the DOSAR and "Part 609" within the DOSAR.

(ii) Subpart would be "DOSAR Subpart 609.4" outside the DOSAR and "Subpart 609.4" within the DOSAR.

(iii) Section would be "DOSAR 609.407" outside the DOSAR and "609.407" within the DOSAR.

(iv) Subsection would be "DOSAR 609.407-3" outside the DOSAR and "609.407-3" within the DOSAR.

(v) Paragraph would be "DOSAR 609.407-3(a)" outside the DOSAR and "609.407-3(a)" within the DOSAR.

(2) When any part, subpart, section, subsection, or paragraph of the DOSAR is referenced formally in official documents such as legal briefs, it shall be prefaced by "48 CFR."

Subpart 601.4—Deviations from the FAR

601.403 Individual deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.403. The Office of the Procurement Executive is the DOS central agency control point for furnishing to the FAR Secretariat a copy of each approved deviation.

601.404 Class deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a). The Office of the Procurement Executive is the DOS central agency control point for furnishing to the FAR Secretariat a copy of each approved class deviation.

601.405 Deviations pertaining to treaties and executive agreements.

The Procurement Executive shall determine whether a deviation pertaining to treaties and executive agreements is authorized under FAR 1.405 or that a request for deviation is required under FAR 1.405(e). The Office of the Procurement Executive is the DOS central agency control point for deviations pertaining to treaties and executive agreements; that office shall provide to the FAR Secretariat a copy of each approved deviation.

601.470 Deviations from the DOSAR

The authority to approve any deviations from the DOSAR is reserved to the Procurement Executive. The

Office of the Procurement Executive is the DOS central agency control point for all DOSAR deviations.

601.471 **Procedures.**

(a) The head of the contracting activity (see 601.603-70) shall submit to the Procurement Executive a written request for each deviation from the FAR or the DOSAR, whether for individual cases, classes of cases, or deviations pertaining to treaties and executive agreements. Each request for a deviation shall state—

(1) The nature of the deviation requested, including whether an individual or class deviation is requested;

(2) The FAR or DOSAR regulation from which the deviation is requested;

(3) The circumstances under which the deviation would be used;

(4) The effect intended by the deviation; and

(5) The expiration date recommended for the deviation.

(b) With the request for a deviation, the head of the contracting activity shall submit all pertinent documentation supporting the request.

(c) The contracting officer shall include in the contract file a copy of each authorized deviation that pertains to the acquisition.

Subpart 601.5—Agency and Public Participation

601.570 **Rule making.**

(a) The DOSAR is promulgated and may be revised, as necessary, in accordance with section 22 of the Office of Federal Procurement Policy Act, Pub. L. 93-400, as amended (41 U.S.C. 418b).

(b) The Procurement Executive shall either accomplish or concur in all DOS acquisition rule making.

Subpart 601.6—Contracting Authority and Responsibilities

601.601 **General.**

The Procurement Executive is the agency head for the purposes of FAR 1.601.

601.602 **Contracting officers.**

601.602-1 **Authority.**

(a) DOS contracts are let pursuant to the foreign affairs management responsibilities conferred on the Secretary of State (22 U.S.C. 2656), and the various laws, regulations, and Executive Orders relating thereto.

(b) Except as otherwise provided by law, DOS regulations, and this DOSAR, the Procurement Executive has the authority to execute, award, and administer contracts, purchase orders, other contractual arrangements, and other agreements, including interagency agreements, for the expenditure of funds involved in the acquisition of personal property, services, and for the sale of personal property. The Procurement Executive may further delegate this authority to those DOS employees appointed or designated to the contracting activities enumerated in 601.603-70.

(c) The contracting officer shall not award, modify, or terminate unless all reviews, clearances, and approvals prescribed in the FAR or the DOSAR have ben obtained, and all applicable requirements of law, the FAR, the DOSAR, and other regulations have been met.

601.602-3 **Ratification of unauthorized commitments.**

(b) *Policy.* (1) The Government generally is not bound by unauthorized commitments. Unauthorized commitments violate the Federal Property and Administrative Services Act, other Federal laws, the FAR, the DOSAR, and proper acquisition practice. Therefore, such unauthorized commitments are serious violations that usually necessitate disciplinary action agaisnt the transgressor.

(2) The authority to ratify an unauthorized contractual commitment is reserved to the Procurement Executive.

(3) Unauthorized contractual commitments that would involve claims subject to resolution under the Contracts Dispute Act of 1978 shall be processed in accordance with FAR Subpart 33.2 and Subpart 633.2.

(c) *Limitations.* The contracting officer is not required to obtain concurrence of legal counsel when recommending payment of an unauthorized commitment.

601.602-3-70 Procedures.

(a) The person who made the unauthorized commitment shall submit to the contracting officer assigned the ratification action all records and documents concerning the unauthorized commitment. That person shall provide a complete written, signed statement of the facts, including why normal acquisition procedures were not followed, why and how the vendor was selected, a list of other sources considered, a description of work or products, a statement regarding the status of performance, an estimated or agreed price, and certified funding citations. When the person who made the unauthorized contractual commitment is no longer available to attest to the circumstances of the unauthorized commitment, an officer from the responsible office shall accomplish the requirements of this paragraph; the statement shall identify the individual responsible for the unauthorized contractual commitment.

(b) The contracting officer assigned the ratification action, after determining that the requirements of paragraph (a) above have been met, shall prepare and execute a recommendation to ratify an unauthorized commitment.

(1) The recommendation shall include the facts and circumstances of the unauthorized commitment; the information prescribed in FAR 1.602-3(c)(1) and (c)(3) through (c)(6); and a recommendation to the ratifying official that the unauthorized commitment be ratified.

(2) Following the signature of the contracting officer, the recommendation shall include a statement that the Procurement Executive could have granted authority to enter into a contractual commitment at the time it was made and still has the authority to do so; that the Procurement Executive hereby ratifies the unauthorized commitment in the amount specified; and a date and signature block for the Procurement Executive.

(c) The information required in paragraph (b)(1) above shall be supported by factual findings included or referenced in the recommendation.

(d) The contracting officer shall submit, through the head of the contracting activity (see 601.603-70), to the Procurement Executive the complete file for ratification of the unauthorized commitment.

(e) Upon receipt and review of the complete file, if the Procurement Executive ratifies the unauthorized commitment, the file shall be returned, through the head of the contracting activity, to the contracting officer for issuance of the appropriate contractual document(s). If the request for ratification is not justified, the Procurement Executive shall return the request to the head of the contracting activity with a written explanation for the decision and a recommendation for disposition of the action.

601.603 Selection, appointment, and termination of appointment.

601.603-3 Appointment.

(a) The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603-3. The contracting officer shall retain the original copy of the Standard Form 1402, Certificate of Appointment, signed by the Procurement Executive.

(b) The Procurement Executive appoints DOS contracting officers for overseas posts by specific positions, not by individual, because Foreign Service personnel assignments are rotational.

601.603-70 Delegations of authority.

(a) *Policy.* Pursuant to 601.602-1(b), the Procurement Executive has delegated procurement authority to the following contracting activities. These authorities are not redelegable. Where more than one official is listed, the abbreviation "HCA" is used to designate each head of the contracting activity, as defined in FAR 2.101.

(b) *Delegations*—(1) *Overseas posts.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services and to sell personal property is delegated to the Principal Officer, the Administrative Officer, and the Principal General Services Officer (HCA).

(i) Direct transactions with vendors within the United States shall be $25,000 or less per transaction unless such transaction is under a contract executed by the Department of State, the General Services Administration, or other U.S. Government Agency. Such transactions with U.S. vendors shall be in accordance with small purchase procedures described in FAR Part 13 and Part 613.

(ii) No authority is delegated to enter into cost-reimbursement or fixed-price incentive contracts.

(iii) When expressly authorized by a U.S. Government agency which does not have a contracting officer at the post, the officers named above in this subparagraph may enter into contracts for that agency. Use of this authority is subject to the statutory authority of that agency and any special contract terms or other requirements necessary for compliance with any conditions or limitations applicable to the funds of that agency. The agency's authorization shall cite the statute(s) and state any special contract terms or other requirements with which the acquisition so authorized must comply. In view of the contracting officer's responsibility for the legal, technical, and administrative sufficiency of contracts, questions regarding the propriety of contracting actions that the post is requested to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(2) *Office of Foreign Buildings.* The authority to enter into and administer contracts pursuant to the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 292 et seq.), including the authority to make all determinations required or permitted by Section 11 of said Act but not otherwise restricted therein, is delegated to the Deputy Assistant Secretary for Foreign Buildings and to the Assistant Director for Acquisitions (HCA).

(3) *Office of Supply, Transportation and Procurement.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of services and personal property, and for the sale of personal property, is delegated to the Chief of the Procurement Division.

(4) *Office of Language Services.* The authority to enter into and administer contracts for interpreting, translating, conference reporting, and related language support and escort services is delegated to the Director.

(5) *Office of Overseas Schools.* The authority to enter into and administer contracts pursuant to section 29 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2701), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director.

(6) *Library.* The authority to enter into and administer contracts for the direct purchase of printing, binding, and blank-book work, when authorized by the Public Printer pursuant to the provisions of the Public Printing and Documents Act of 1968, as amended (44 U.S.C. 504), and for the acquisition of newspapers, books, maps, and periodicals is delegated to the Chief Librarian.

(7) *Office of Communications.* The authority to enter and administer contracts for leasing communications circuits is delegated to the Chief, Networks Staff.

(8) *Foreign Service Institute.* The authority to enter into and administer contracts pursuant to Chapter 7, Title I, of the Foreign Service Act of 1980, as amended (22 U.S.C. 4021 et seq.), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director of the Foreign Service Institute, the Executive Director, and the Supervisory General Services Officer (HCA).

(9) *Office of Foreign Missions.* The authority to enter into and administer contracts pursuant to Title II of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4301 et seq.), including all determinations required or permitted by section 208 of said Act but not otherwise restricted therein, is delegated to the Director, Office of Foreign Missions, and the Administrative Officer (HCA).

(10) *Office of International Conferences.* The authority to enter into and

administer contracts pursuant to section 5, Title I, of the Department of State Basic Authorities Act of 1956, as amended (22 U.S.C. 2672), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director.

(11) *Bureau for Refugee Programs.* The authority to enter into and administer contracts pursuant to the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601 et seq.), and Executive Order 11077, dated January 22, 1963, including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director, Bureau for Refugee Programs, and the Comptroller (HCA).

(12) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts pursuant to the United Nations Participation Act of 1945, as amended (22 U.S.C. 287), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Counselor for Administration.

PART 602—DEFINITIONS OF WORDS AND TERMS

Subpart 602.1—Definitions

Sec.

602.101 Definitions.
602.101-70 DOSAR definitions.

Subpart 602.2—Definitions Clause

602.201 Contract clause.
602.201-70 DOSAR contract clause.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26162, July 11, 1988, unless otherwise noted.

Subpart 602.1—Definitions

602.101 Definitions.

602.101-70 DOSAR definitions.

For the purposes of the DOSAR, unless otherwise indicated, the following terms have the meanings set forth in this subpart.

"Consolidated Receiving Point" or "CRP"; means the packing firm employed by a Despatch Agency to receive and prepare items for shipment to a post. The CRP acts as agent for the government, and goods that are delivered to the CRP are constructively received by the government. The CRP receives, records, consolidates, and packs items for shipment overseas under the direction of the Despatch Agency.

"Department" or "DOS" means the Department of State, including all of its activities wherever located.

"Despatch Agency" means the office responsible for the transportation of goods between the U.S. and posts within its specific geographic area as assigned by the Transportation Division, Office of Supply, Transportation and Procurement. There are four Despatch Agencies, one each in New York City; Baltimore, Maryland; Miami, Florida; and San Francisco, California.

"Government" means the Government of the United States of America unless specifically stated otherwise.

"Local procurement" means acquisition by a post in the country in which the post is located.

"Overseas post" means a "post" located outside the United States of America.

"Post" means a diplomatic or consular mission of the United States of America, administered or managed by the DOS.

"Third country procurement" means acquisition by a post in a country other than the country in which the post is located and other than the United States.

Subpart 602.2—Definitions Clause

602.201 Contract clause.

602.201-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.202-70, Definitions, in solicitations and contracts when the acquisition may be made from a source outside the United States or when the work may be performed outside the United States.

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 603.2—Contractor Gratuities to Government Personnel

Sec.
603.203 Reporting suspected violations of the Gratuities clause.
603.204 Treatment of violations.

Subpart 603.3—Reports of Suspected Antitrust Violations

603.303 Reporting suspected antitrust violations.

Subpart 603.4—Contingent Fees

603.408 Evaluation of the SF 119.
603.408-1 Responsibilities.

Subpart 603.6—Contracts with Government Employees or organizations owned or Controlled by Them

603.602 Exceptions.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26163, July 11, 1988, unless otherwise noted.

Subpart 603.2—Contractor Gratuities to Government Personnel

603.203 Reporting suspected violations of the Gratuities clause.

DOS personnel shall report immediately and in writing any apparent or suspected violation of the clause at FAR 52.203-3, Gratuities, in connection with any DOS operation. The report shall be made to the contracting officer and the Assistant Inspector General for Investigations. The report shall identify the individuals involved, outline the events, acts, or conditions which indicate the apparent violation occurred, and include all pertinent documents. The Assistant Inspector General for Investigations shall review the report for completeness and accuracy and shall make a preliminary decision whether to proceed with a full investigation. The Assistant Inspector General for Investigations shall provide the written decision to the individual who made the report and the contracting officer. If the decision is to proceed with an investigation, copies of the decision shall also be provided to the head of the contracting activity (see 601.603-70), the Procurement Executive, and the Office of the Legal Adviser.

603.204 Treatment of violations.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 3.204.

(b) *Procedures.* Upon a decision to proceed with an investigation of an alleged violation of the Gratuities clause, the Assistant Inspector General for Investigations shall provide to the contractor a written notice by certified mail, return receipt requested. The notice shall present the findings of the decision and shall establish a schedule, including location, for an investigative hearing for the purposes prescribed in FAR 3.204(b). As determined necessary by the Assistant Inspector General for Investigations, follow-up hearings may be scheduled. Upon completion of the investigation, the Assistant Inspector General for Investigations shall provide to the Procurement Executive a report and recommendation, together with all pertinent documentation.

(c) In addition to the requirements of FAR 3.204(c), when the Procurement Executive determines that a violation has occurred, the Procurement Executive shall so notify the Assistant Inspector General for Investigations. The Assistant Inspector General for Investigations shall then notify the individual who made the report, the Office of the Legal Adviser, and, if appropriate, the Department of Justice.

Subpart 603.3—Reports of Suspected Antitrust Violations

603.303 Reporting suspected antitrust violations.

(a) DOS employees are obligated to report immediately and in writing any apparent or suspected antitrust violation, as described in FAR 3.303.

(b) The report shall outline the events, acts, or conditions which indicate the apparent violation and shall include all pertinent documents.

(c) The report shall be made to or by the contracting officer, who shall review it for completeness and accuracy and forward it through the head of the contracting activity (see 601.603-70), to the Office of the Legal Adviser, with a copy to the Procurement Executive. The Office of the Legal Adviser shall provide to the U.S. Attorney General a report on each suspected violation, with singles copies to the head of the contracting activity and the Procurement Executive.

Subpart 603.4—Contingent Fees

603.408 Evaluation of the SF 119.

603.408-1 Responsibilities.

In carrying out responsibilities prescribed in FAR 3.408-1, the contracting officer shall obtain advice from the Office of the Legal Adviser as to the legality and general propriety of the relationship disclosed thereon. Also, the contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient for a proper decision. After reviewing and evaluating all the information obtained, the contracting officer shall render a written decision that shall be included in the contract file, and shall provide a copy of the decision to the Procurement Executive.

Subpart 603.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

603.602 Exceptions.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.602.

PART 604—ADMINISTRATIVE MATTERS

Subpart 604.2—Contract Distribution

Sec.

604.202 Agency distribution requirements.

Subpart 604.4—Safeguarding Classified Information Within Industry

604.404 Contract clause.
604.404-70 DOSAR contract clauses.

Subpart 604.70—Contract Review

604.7001 Policy.
604.7002 Procedures.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26163, July 11, 1988, unless otherwise noted.

Subpart 604.2—Contract Distribution

604.202 Agency distribution requirements.

As necessary, the contracting officer shall distribute reproduced copies of the signed contract or modification to those officers/offices involved in contract administrative support functions, e.g., the Contracting Officer's Representative; the requirements office; the Despatch Office or other receiving activity, particularly if it is the initial point of contact for receipt of goods or services; and each post or office where the contract will be performed. Where required by the laws of a foreign country, the original copy of the contract or modification shall be retained at the overseas post.

Subpart 604.4—Safeguarding Classified Information Within Industry

604.404 Contract clause.

604.404-70 DOSAR contract clauses.

(a) The contracting officer shall insert the clause at 652.204-70, Security Requirements, in solicitations and contracts performed outside the United States to the extent the contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or access to administratively controlled information ("Limited Official Use"). Contractors or contract employees that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The contracting officer shall insert the clause at 652.204-71, Security Requirements—Personnel, in solicitations and contracts performed outside the United States.

Subpart 604.70—Contract Review

604.7001 Policy.

The contracting officer shall review each proposed contractual document and its supporting file for completeness and accuracy. Each contract file shall contain all pertinent information applicable to the proposed action. Each contract file should be in sufficient detail to permit reconstruction of all significant events by any subsequent reviewer without referral to the individual responsible for the contractual action.

[53 FR 26163, July 11, 1988; 53 FR 36461, Sept. 20, 1988]

604.7002 Procedures.

(a) Prior to issuance of a solicitation or a solicitation amendment, award of a contract, or execution of a contract modification, any of which is estimated to exceed $100,000, the contracting officer shall forward the proposed contractual action to Office of the Procurement Executive for review. For contract modifications, the contracting officer shall submit such actions in accordance with 643.102-70(b).

(b) The Office of the Procurement Executive shall document the scope and extent of the review and shall submit written recommendations to the contracting officer on each proposed contract action reviewed. In the event the contracting officer and the reviewer cannot reach agreement on the recommendation(s), the contracting officer shall document the contract file to show the rationale for not adopting any recommendations, and shall forward the file to the officer one level above the contracting officer for resolution or approval, as appropriate. For purposes of this section, the officer who has resolution/approval authority shall not be the same individual who will sign the contractual document. In instances where the contracting officer is the head of the contracting activity, as identified at 601.603-70(b), that officer shall be the Procurement Executive for domestic acquisitions and the Principal Officer at post for overseas acquisitions.

(c) For postaward reviews, the Office of the Procurement Executive shall document the scope and extent of the review and shall submit the results of its findings to the contracting officer for appropriate action.

(d) The Procurement Executive may delegate or waive the review requirements. In such instances, the Procurement Executive shall provide to each head of the contracting activity, as appropriate, a written delegation or waiver of these requirements.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

Subpart 605.2—Synopsis of Proposed Contract Actions

Sec.

605.202 Exceptions.
605.202-70 Foreign acquisitions.
605.207 Preparation and transmittal of synopses.
605.207-70 Acquisitions available from only one responsible source.

Subpart 605.5—Paid Advertisements

605.502 Authority.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26164, July 11, 1988, unless otherwise noted.

Subpart 605.2—Synopsis of Proposed Contract Actions

605.202 Exceptions.

605.202-70 Foreign acquisitions.

(a) *Purpose.* This subsection provides policy and procedures necessary to waive the requirement to synopsize proposed contracts in the *Commerce Business Daily* (CBD). The policy and procedures apply only to acquisitions by overseas posts when the acquisitions are made from sources outside the United States, its possessions, and Puerto Rico.

(b) *Policy.* Under certain conditions, waiver of the requirement to publish in the CBD notices of proposed contract actions is necessary for acquisitions by overseas posts when these acquisitions are made from sources outside the United States, its possessions, and Puerto Rico. This policy was processed in compliance with and as authorized by section 18(c)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and section 8(g)(3) of the Small Business Act (15 U.S.C. 637 et seq.). This policy applies only to acquisitions funded under DOS appropriations.

(c) *Procedures.* (1) When a DOS contracting activity at post receives a request for supplies or services the requirements office shall provide with the request a memorandum identifying all established sources of supply known to the requirements office, critical dates for delivery, installation and operational dates, an estimate of the total time lapse between the date of order and final contractor performance, the urgency of the requirement, and any other factors that may be unique or mandatory to the acquisition.

(2) The head of the contracting activity (see 601.603-70) shall review the information provided by the requirements office to determine whether publication of a CBD notice is required.

(i) If the head of the contracting activity determines that publication of CBD notice will not delay or otherwise adversely impact the post's ability to satisfy the acquisition, the notice shall be published in accordance with FAR Subpart 5.2.

(ii) If the head of the contracting activity determines that publication of a CBD notice will delay or otherwise adversely impact the post's ability to satify the acquisition, that official may waive the CBD notice requirements of FAR Subpart 5.1. This determination must be in writing and made in consideration of such factors as overseas delivery, installation, maintenance or replacement requirements, special product or performance specifications, and security clearance requirements. The contracting activity shall conduct a negotiated acquisition with qualified local sources. If there are known U.S. firms or firms with U.S. affiliations in local residence capable of supplying the required supplies or services, the contracting activity shall ensure that those firms are included in the source list for the acquisition. Competition in such acquisitions, including the use of written solicitations, shall be obtained in all cases to the extent feasible and consistent with FAR Part 6 and Part 606.

(iii) The authority to make the determinations prescribed in this paragraph is not redelegable.

(d) *Documentation.* (1) Whenever the head of the contracting activity determines that use of this waiver authority is required, the following documentation shall be prepared and placed in the contract file:

(i) A determination and findings as to the existence of an overseas acquisition where it is unreasonable or inappropriate to publish in the CBD a notice for the proposed contract action; and

(ii) A memorandum stating what efforts have been made to identify known and qualified sources and to obtain competition, detailing what negotiation procedures were followed, and justifying the selection and award.

(2) The head of the contracting activity shall sign all documents prescribed in this section. That official's signature on the documents constitutes approval of the determination to apply the waiver policy and certification of the completeness and accuracy of the information upon which the waiver is based.

605.207 Preparation and transmittal of synopses.

605.207-70 Acquisitions available from only one responsible source.

In addition to the information required at FAR 5.207, each synopsis of a proposed acquisition from only one responsible source shall include descriptions of the specific qualifications or capabilities required to perform the work and the information a potential source must submit.

Subpart 605.5—Paid Advertisements

605.502 Authority.

(a) For paid advertisements in newspapers within the United States, the Procurement Executive is the agency head's designee for the purposes of FAR 5.502(a). For acquisitions by overseas posts necessitating paid advertisements in the newspapers outside the United States, the Principal General Services Officer is the agency head's designee for the purposes of FAR 5.502(a). When the Principal General Services Officer is the contracting officer for the acquisition, the officer approving the paid advertisement shall be either the Administrative Officer or the Principal Officer, as appropriate.

(b) The Procurement Executive is the agency head for the purposes of FAR 5.502(b). Advance written authorization, in accordance with and from the official designated in paragraph (a) above, is required to place paid advertisements in media other than newspapers.

PART 606—COMPETITION REQUIREMENTS

Subpart 606.1—Full and Open Competition

Sec.

606.101 Policy.
606.101-70 Foreign acquisitions not synopsized.

Subpart 606.2—Full and Open Competition After Exclusion of Sources

606.202 Establishing or maintaining alternate sources.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.
606.302-7 Public interest.
606.303-1 Requirements.
606.304 Approval of the Justification.
606.304-70 Acquisitions by overseas posts.

Subpart 606.5—Competition Advocates

606.501 Requirement.
606.501-70 Overseas posts.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

Subpart 606.1—Full and Open Competition

606.101 Policy.

606.101-70 Foreign acquisitions not synopsized.

As provided in 605.202-70, overseas posts may exempt certain acquisitions from the requirement to synopsize in the *Commerce Business Daily.* Full and open competition for such acquisitions is met when the competitive procedures prescribed in FAR 6.102 are used.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988]

Subpart 606.2—Full and Open Competition After Exclusion of Sources

606.202 Establishing or maintaining alternate sources.

The Procurement Executive is the agency head for the purposes of FAR 6.202.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.

606.302-7 Public interest.

The authority to approve the determination prescribed in FAR 6.302-7(c) is reserved to the Secretary of State.

606.303-1 Requirements.

Justifications for contract actions prescribed in FAR 6.303-1(d) shall be forwarded by the contracting officer to the Office of the Procurement Executive for transmittal to the Office of the United States Trade Representative.

606.304 Approval of the Justification.

606.304-70 Acquisitions by overseas posts.

The Principal Officer at each overseas post is the approval authority for the purposes of FAR 6.304(a)(3). This authority is not redelegable.

Subpart 606.5—Competition Advocates

606.501 Requirement.

The Procurement Executive is the head of the agency for the purposes of FAR 6.501.

606.501-70 Overseas posts.

The Administrative Officer at each overseas post is the competition advocate for that post.

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 608.4—Ordering from Federal Supply Schedules

Sec.
608.402 Applicability.
608.402-70 Overseas posts.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

Subpart 608.4—Ordering from Federal Supply Schedules

608.402 Applicability.

608.402-70 Overseas posts.

Use of the Federal Supply Schedules is not mandatory for overseas posts nor is it required for any acquisitions inside the United States for use outside the United States.

PART 609—CONTRACTOR QUALIFICATIONS

Subpart 609.2—Qualifications Requirements

Sec.
609.202 Policy.

Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.
609.403-70 DOSAR definitions.
609.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.
609.405 Effect of listing.
609.405-1 Continuation of current contracts.
609.405-2 Restrictions on subcontracting.
609.405-70 Termination action decision.
609.406 Debarment.
609.406-1 General.
609.406-3 Procedures.
609.407 Suspension.
609.407-1 General.
609.407-3 Procedures.

Subpart 609.5—Organizational Conflicts of Interest

609.503 Waiver.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

Subpart 609.2—Qualifications Requirements

609.202 Policy.

The authority prescribed in FAR 9.202(a)(1) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70).

Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.

"Debarring official" means the Procurement Executive.

"Suspending official" means the Procurement Executive.

609.403-70 DOSAR definitions.

"Fact-finding official" means the chairperson of a three member fact-finding panel. The panel comprises one representative each from the Office of the Legal Adviser, the contracting activity, and the requirements office. The representative from the Office of the Legal Adviser is the panel chairperson.

"Notice" means a written communication sent by certified mail (return receipt requested) to the last known address of the party, its identified counsel, or its agent. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed. This definition applies to the notice requirements in FAR 9.406-3 and FAR 9.407-3.

609.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

The Office of the Procurement Executive shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (c)(3). The authority to establish procedures prescribed in FAR 9.404(c)(5) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988]

609.405 Effect of listing.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

609.405-1 Continuation of current contracts.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-1. The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in 609.405-70.

609.405-2 Restrictions on subcontracting.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-2.

609.405-70 Termination action decision.

Prior to making a decision to terminate, based on the considerations listed below, the contracting officer shall have the proposed action reviewed by agency contracting and technical personnel and by the Office of the Legal Adviser.

(a) *Termination for default.* Termination for default under a contract's default clause is appropriate when the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of that contract. Debarment or suspension of the contractor for reasons unrelated to the performance of that contract may not support a termination for default.

(b) *Termination for convenience or cancellation.* Termination for convenience or cancellation under appropriate contract clauses should be considered when the contractor presents a significant risk to the Government in completing a current contract and when such termination for convenience or cancellation is determined to be in the Government's best interests. In making this determination, the contracting officer should consider such factors as the—

(1) Seriousness of the cause for debarment or suspension;

(2) Extent of contract performance;

(3) Potential costs to the Government;

(4) Urgency of the requirement and the impact of the delay; and/or

(5) Availability of other safeguards to protect the Government's interests.

(c) *Concurrence and approval.* The contracting officer's decision to terminate an existing contract with a debarred or suspended contractor must have—

(1) Written concurrence from the Office of the Legal Advisor, and

(2) Approval one level above the contracting officer.

609.406 Debarment.

609.406-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.406-1(c).

609.406-3 Procedures.

(a) *Investigation and referral.* (1) DOS employees aware of any cause that may serve as the basis for debarment shall immediately refer those cases through the contracting officer to the debarring official. The debarring official shall immediately refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office.

(2) Referrals for consideration of debarment shall include—

(i) The cause for debarment (see FAR 9.406-2);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list of all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the impact of a debarment on DOS programs.

(b) *Decisionmaking process.* (1) If the contractor does not respond to a debarment notice within 30 calendar days after receipt of the notice, the debarring official may put the debarment into effect.

(2) In response to the debarment notice, if the contractor or its representative notifies the debarring official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarring official, that official shall chair such a meeting within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time. The oral presentation shall be conducted informally and a transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to FAR 9.406-3(b)(2), the contractor may request and shall be entitled to a hearing before the fact-finding panel. The fact-finding panel shall conduct the hearing within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time.

(4) The debarring official shall convene the fact-finding panel for this purpose and shall provide the panel with a copy of all documentary evidence on the matter. Upon receipt of such material, the fact-finding official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in FAR 9.406-3(b)(2), the hearing is intended to provide the debarring official with findings of fact based on a preponderance of evidence submitted to the fact-finding panel and to provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding panel shall conduct its hearing in accordance with rules promulgated by the fact-finding official. The rules shall be as informal

as is practicable, consistent with FAR 9.406-3(b) The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding panel agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the transcribed record, if made, to the debarring official within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) *Notice of proposal to debar.* (1) Upon receipt of a complete referral and after consulting with the Office of the Legal Adviser, the debarring official shall decide whether to initiate debarment action.

(2) When a determination is made to initiate action, the debarring official shall provide to the contractor and any specifically named affiliates written notice in accordance with FAR 9.406-3(c). A copy of the notice shall be provided to the DOS officer who made the referral and to each DOS organizational elements affected by the determination.

(3) When a determination is made not to initiate action, the debarring official shall so advise the DOS officer who made the referral.

(d) *Debarring official's decision.* In addition to complying with FAR 9.406-3(d) and FAR 9.406-3(e), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988]

609.407 Suspension.

609.407-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.407-1(d).

609.407-3 Procedures.

(a) *Investigation and referral.* Investigation and referral shall be accomplished as provided in 609.406-3(a), except that referrals made to the suspending official shall cite causes pertinent to a suspension action (see FAR 9.407-2).

(b) *Decisionmaking process.* (1) If the contractor does not respond to a notice of suspension within 30 calendar days after receipt of the notice, the suspending official may proceed with completion of investigation.

(2) The DOS decisionmaking process for a suspension action pursuant to FAR 9.407-3(b) follow those established for a debarment action (see 609.406(b)), except that the contractor may request and shall be entitled to a hearing before the fact-finding panel only if permitted under FAR 9.407-3(b)(2).

(c) *Notice of suspension.* Notice of suspension shall be accomplished as provided in 609.406-3(a), except that the suspending official shall process the notice in accordance with FAR 9.407-3(c).

(d) *Suspending official's decision.* In addition to complying with FAR 9.407-3(d), the suspending official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

Subpart 609.5—Organizational Conflicts of Interest

609.503 Waiver.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.503.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 613.1—General

Sec.

613.103 Policy.
613.103-70 Acquisition by overseas posts.

Subpart 613.4—Imprest Fund

613.404 Conditions for use.

Subpart 613.5—Purchase Orders

613.501 General.
613.505 Purchase order and related forms.
613.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
613.507 Clauses.
613.507-70 DOSAR clauses.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26167, July 11, 1988, unless otherwise noted.

Subpart 613.1—General

613.103 Policy.

613.103-70 Acquisition by overseas posts.

(a) Overseas posts are authorized to use small purchase and other simplified purchase procedures to make purchases directly from sources within or outside the United States, in accordance with FAR Part 13, this Part 613, and 601.603-70(b)(1).

(b) Overseas posts shall ensure that the terms and conditions prescribed in FAR Part 13 are added or incorporated by reference on the documents used for small purchases from U.S. vendors.

Subpart 613.4—Imprest Fund

613.404 Conditions for use.

The Procurement Executive is the agency head's designee for the purposes of FAR 13.404(a).

Subpart 613.5—Purchase Orders

613.501 General.

The contracting officer shall distrib ute copies of each purchase order i conformance with Subpart 604.2.

613.505 Purchase order and related form

613.505-2 Agency order forms in lieu Optional Forms 347 and 348.

(a) In lieu of Optional Forms 34 and 348, DOS contracting activitie may use either—

(1) Optional Form (OF) 206, Pu chase Order, Receiving Report an Voucher, and Optional Form 206 Continuation Sheet (illustrated 653.302-206 and 653.302-206A, respe tively); or

(2) Department of State Form (DS 1089, Order—Supplies or Services (lustrated in 653.303-DST-1089).

(b) Both OF 206 and form DST 10 provide the requisite space for pu chase data and budgetary, accounti and voucher payment data. Eith form may be used as—

(1) A purchase order for small pu chases;

(2) A delivery order under an esta lished contract;

(3) Documentation in connecti with a blanket purchase agreeme and/or

(4) A voucher.

(c)(1) When using OF 206, contra ing activities may use Optional Fo (OF) 127, Receiving and Inspecti Report (illustrated in 653.302-127), that purpose.

(2) When using form DST 1089 a purchase order and until such time the form is revised, contracting act ties shall replace the "Terms and C ditions Applicable to Purch Orders" (located on the reverse of original copy) with the appropri FAR and DOSAR clauses, in acco ance with 613.507-70.

613.507 Clauses.

613.507-70 DOSAR clauses.

In addition to the clauses listed on OF 347 or as otherwise prescribed in FAR 13.507, each DOS purchase order shall incorporate all DOSAR clauses required for or applicable to the acquisition. All such clauses may be listed on a separate document and attached to each copy of the purchase order, in which case the document shall be identified by the purchase order number and the name and address of the contracting activity.

PART 614—SEALED BIDDING

Subpart 614.2—Solicitation of Bids

Sec.
614.201 Preparation of Invitation for Bids (IFB).
614.201-7 Contract clauses.
614.201-7-70 DOSAR contract clauses.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of Bids.
614.402-1 Unclassified bids.
614.402-70 Waiver of public opening of bids.
614.404 Rejection of bids.
614.404-1 Cancellation of invitations after opening.
614.406 Mistakes in bids.
614.406-3 Other mistakes disclosed before award.
614.406-4 Mistakes after award.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26168, July 11, 1988, unless otherwise noted.

Subpart 614.2—Solicitation of Bids

614.201 Preparation of Invitation for Bids (IFB).

614.201-7 Contract clauses.

614.201-7-70 DOSAR contract clauses.

(a) (1) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214-70, Language Version, in all solicitations and contracts awarded or performed overseas.

(2) Use of English language solicitations and contracts is mandatory unless a deviation has been approved by the Procurement Executive in accordance with 601.470. If any part of a contract is not written in the English language, the contracting officer shall attach an accurate English language translation of such part to the original and each copy of the contract, unless the contracting officer determines such action is infeasible.

(b) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214-71, Notices, in all solicitations and contracts awarded or performed overseas.

(c) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214-72, Authorization to Perform, in all solicitations and contracts awarded or performed overseas.

(d) See 615.106-70 regarding use of the clauses prescribed in this subsection when contracting by negotiation.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of bids.

614.402-1 Unclassified bids.

After the unclassified bids have been opened pursuant to FAR 14.402-1, the bid opening officer shall announce that the opening of bids has been completed and that all bidders will be notified as soon as possible regarding the award.

614.402-70 Waiver of public opening of bids.

Overseas posts may request waiver of the public opening of bids if that activity is inconsistent with local law or legal practice, or with post security. For that purpose, the Procurement Executive must approve a deviation in accordance with 601.470.

614.404 Rejection of bids.

614.404-1 Cancellation of invitations after opening.

The authority to make the determination prescribed in FAR 14.404-1(c) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making a determination pursuant to this subsection.

614.406 Mistakes in bids.

614.406-3 Other mistakes disclosed before award.

The authority to make the determinations prescribed in FAR 14.406 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.406-3(f), the head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making any determinations pursuant to this subsection.

614.406-4 Mistakes after award.

The authority to make all determinations prescribed in FAR 14.406-4 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.406-4(d), the head of the contracting activity shall consult with the Office of the Legal Adviser before making any determinations pursuant to this subsection.

PART 615—CONTRACTING BY NEGOTIATION

Subpart 615.1—General Requirements for Negotiations

Sec.
615.106 Contract clauses.
615.106-1 Examination of Records clause.
615.106-70 DOSAR contract clauses.

Subpart 615.6—Source Selection

615.607 Disclosure of mistakes before award.
615.608 Proposal evaluation.
615.612 Formal source selection.

Subpart 615.8—Price Negotiation

615.804 Cost or pricing data.
615.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Source: 53 FR 26168, July 11, 1988, unless otherwise noted.

Subpart 615.1—General Requirements for Negotiation

615.106 Contract clauses.

615.106-1 Examination of Records clause.

See Subpart 625.9 for conditions for omission of the Examination of Records clause.

615.106-70 DOSAR contract clauses.

When contracting by negotiation, the contracting officer shall insert the clauses at 652.214-70, Language Version, 652.214-71, Notices, and 652.214-72, Authorization to Perform, in all solicitations and contracts, under the same conditions prescribed in 614.201-7-70.

Subpart 615.6—Source Selection

615.607 Disclosure of mistakes before award.

The authority to make the determination prescribed in FAR 15.607(c)(3) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). In conformance with FAR 15.607(c)(3)(ii), the head of the contracting activity shall obtain a legal review from the Office of the Legal Adviser before making a determination pursuant to this subsection.

615.608 Proposal evaluation.

The authority to make the determination prescribed in FAR 15.608(b) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making a determination pursuant to this section.

615.612 Formal source selection.

The authority prescribed in FAR 15.612(b), including the authority to designate a source selection authority, is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 615.8—Price Negotiation

615.804 Cost or pricing data.

615.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

The waiver authority prescribed in FAR 15.804-3(i) is delegated, without power of redelegation, to the head of the contracting activity.

PART 616—TYPES OF CONTRACTS

Subpart 616.1—Selecting Contract Types

Sec.
616.102 Policies.
616.102-70 Overseas posts.

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-price contracts with economic price adjustment.
616.203-4 Contract clauses.
616.207 Firm-fixed-price, level-of-effort term contracts.
616.207-3 Limitations.

Subpart 616.3—Cost-Reimbursement Contracts

616.301-3 Limitations.
616.306 Cost-plus-fixed-fee contracts.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Contract clauses.
616.505-70 DOSAR contract clause.

Subpart 616.6—Time-and-Materials, Labor-Hour, and Letter Contracts

616.603 Letter contracts.
616.603-2 Application.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26169, July 11, 1988, unless otherwise noted.

Subpart 616.1—Selecting Contract Types

616.102 Policies.

616.102-70 Overseas posts.

Pursuant to 601.603-70(b)(1)(ii), no authority is delegated to overseas posts to enter into cost-reimbursement or fixed-price incentive contracts. When the head of the contracting activity (see 601.603-70) at post determines that no other type contract will suffice to obtain needed supplies or services, that officer shall request the Procurement Executive to delegate authority to enter into a cost-reimbursement or fixed-price incentive contract, as appropriate. Such requests shall be submitted on a case-by-case basis.

[53 FR 26169, July 11, 1988; 53 FR 36461, Sept. 20, 1988]

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-Price contracts with economic price adjustment.

616.203-4 Contract clauses.

The contracting officer may use an economic price adjustment clause based on cost indexes of labor or material in accordance with the circumstances listed in FAR 16.203-4(d) and after obtaining the approval of the head of the contracting activity.

616.207 Firm-fixed-price, level-of-effort term contracts.

616.207-3 Limitations.

The head of the contracting activity is the chief of the contracting office for the purposes of FAR 16.207-3.

Subpart 616.3—Cost-Reimbursement Contracts

616.301-3 Limitations.

The determination and findings prescribed in FAR 16.301-3(c) shall be executed by the contracting officer and approved at a level above the contracting officer.

616.306 Cost-plus-fixed-fee contracts.

The authority to make the determination prescribed in FAR 16.306(c)(2) is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Contract clauses.

616.505-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.216-70, Ordering—Indefinite-Delivery Contract, whenever the clause at FAR 52.216-20, Definite Quantity, or the clause at FAR 52.216-21, Requirements, or the clause at FAR 52.216-22, Indefinite Quantity, is used.

Subpart 616.6—Time-and-Materials, Labor-Hour, and Letter Contracts

616.603 Letter contracts.

616.603-2 Application.

The contracting officer, after obtaining approval of the head of the contracting activity, is authorized to extend the period to definitize a letter contract in accordance with FAR 16.603-2(c) and when such action is in the best interest of the Government. For this purpose, the contracting officer shall execute a written determination and findings, and submit it to the head of the contracting activity for approval.

[53 FR 26169, July 11, 1988; 53 FR 36462, Sept. 20, 1988]

PART 617—SPECIAL CONTRACTING METHODS

Subpart 617.1—Multiyear Contracting

Sec.

617.102 Policy.
617.102-2 General.

Subpart 617.2—Options

617.201 Definitions.
617.201-70 DOSAR Definitions.
617.207 Exercise of options.
617.207-70 Synopsis and competition requirements.

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.502 General.

Sec.

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486 (c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26169, July 11, 1988, unless otherwise noted.

Subpart 617.1—Multiyear Contracting

617.102 Policy.

617.102-2 General.

(a) Pursuant to section 14 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2679a), any DOS acquisition for property or services, or both, by any contract funded on the basis of annual appropriations may nevertheless be made for periods not in excess of 5 years when—

(1) Appropriations are available and adequate for payment for the first fiscal year and for all potential cancellation costs; and

(2) The Procurement Executive determines that—

(i) The need of the Government for the property or services being acquired over the period of the contract is reasonably firm and continuing;

(ii) Such a contract will serve the best interests of the Government by encouraging effective competition or promoting economies in performance and operation; and

(iii) Such a method of contracting will not inhibit small business participation.

(b) For overseas posts, the Procurement Executive may delegate to the Principal Officer, on an individual contract or class of contracts basis, the authority to make the determination required by paragraph (a)(2) above. The Principal Officer may not redelegate this authority.

(c) In the event that funds for the continuation of such a contract are not made available into a subsequent fiscal year, the contract shall be canceled. Any cancellation costs incurred shall be paid from appropriations originally available for the performance of the contract, appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.

(d) Any multiyear contract awarded pursuant to this subsection shall not exceed 5 years, including options, in accordance with FAR Subpart 17.2

Subpart 617.2—Options

617.201 Definitions.

617.201-70 DOSAR Definitions.

"Evaluated option" means an option that is evaluated for award purposes by adding the total price for the option(s) to the total price for the basic requirement.

"Priced option" means an option where the prices for the option quantities or performance periods are specified in the contract at the time of award and the option prices are not subject to renegotiation or adjustment at the time the option is exercised unless an economic price adjustment clause is included in the contract.

"Unevaluated option" means an option that is not included in the evaluation for award purposes.

"Unpriced option" means an option where the prices for the option quantities or performance periods are not specified in the contract at the time of award and the option prices are negotiated at the time the option is exercised.

617.207 Exercise of options.

617.207-70 Synopsis and competition requirements.

(a) If the synopsis for the original contract action described the option provisions in sufficient detail to comply with the requirements of FAR 5.207 and the option was evaluated, a synopsis of the option before it is exercised is not required. An evaluated and priced option that was properly synopsized as provided at FAR 5.207 meets the full and open competition requirements of FAR Subpart 6.1 or the requirements of FAR Subpart 6.2 for full and open competition after exclusion of sources.

(b) If the synopsis for the original contract action did not describe the option provisions, or the original contract action was synopsized on a sole source basis, or in those instances where an unevaluated option was included in the contract, the option must be synopsized in accordance with FAR 5.207 before the option can be exercised. Any such unpriced option, option included in a contract awarded on a sole source basis, or unevaluated option is considered a new acquisition and the justification requirements of FAR Subpart 6.3 must be met before the option is exercised.

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.502 General.

The authority to make the determination prescribed in FAR 17.502 is delegated to the head of the contracting activity (see 601.603-70).

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

The Assistant Secretary for Administration is the agency head for the purposes of FAR 17.602.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 619.2—Policies

Sec.
619.201 General policy.

Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.
619.402-70 DOS designee.

Subpart 619.5—Set-Asides for Small Business

619.505 Rejecting set-aside recommendations.

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.
619.602-1 Referral.

Subpart 619.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

619.705 Responsibilities of the contracting officer under the subcontracting assistance program.
619.705-3 Preparing the solicitation.
619.705-4 Reviewing the subcontracting plan.
619.705-6 Postaward responsibilities of the contracting officer.
619.705-6-70 Reporting responsibilities.

Subpart 619.8—Contracting With the Small Business Administration (the 8(a) Program)

619.801 General.
619.803 Selecting acquisitions for the 8(a) program.
619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (OSDBU).
619.870 Acquisition of technical requirements.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26170, July 11, 1988, unless otherwise noted.

Subpart 619.2—Policies

619.201 General policy.

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for performing all functions and duties prescribed in FAR 19.201 (c) and (d).

(b) In addition to the requirements of FAR 19.201(b), each head of the contracting activity (see 601.603-70), or designee, is responsible for establishing in coordination with the OSDBU director annual goals for the DOS small and disadvantaged business program.

(c) The Under Secretary for Management is the agency head for the purposes of FAR 19.201(c).

(d) Pursuant to FAR 19.201(d), each Small and Disadvantaged Business Utilization Specialist (SDBUS) is responsible for—

(1) Maintaining a program to locate capable small business, small disadvantaged business, and women-owned business sources to fulfill DOS acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, and women-owned business sources on DOS contracting and subcontracting opportunities and other acquisition matters;

(3) Advising contracting activities on new or revised small business, small disadvantaged business, or women-owned business policies, regulations, procedures, and other related information;

(4) Assuring that small business, small disadvantaged business and women-owned business concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Reviewing all proposed acquisitions in excess of $25,000 to assure that small business, small disadvantaged business, and women-owned business sources will be afforded an

equitable opportunity to compete and, as appropriate, initiating recommendations for small business or small disadvantaged business set-asides;

(6) Assuring that contract financing available under existing regulations is offered when appropriate and that requests by small business concerns for such financing are not treated as a handicap in the award of contracts;

(7) Providing assistance to the contracting officer in making determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participating in the evaluation of a prime contractor's small business and small disadvantaged business subcontracting plans;

(9) Assuring that the participation of small business, small disadvantaged business, and women-owned business concerns is accurately reported;

(10) Attending, as appropriate, debriefings to unsuccessful small business and small disadvantaged business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(11) Making available to SBA copies of solicitations when so requested;

(12) When a bid or offer from a small business, small disadvantaged business, or women-owned business has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel, and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(13) Participating in Government-industry conferences to assist small business, small disadvantaged business and women-owned business concerns including Business Opportunity/Federal Acquisition Conferences, Minority Business Enterprises Acquisition Seminars and Business Opportunity Committee meetings;

(14) Maintaining a list of supplies and services that have been placed as repetitive small business set-asides;

(15) Participating in the development, implementation, and review of automated source systems to assure that the interests of small business, small disadvantaged business, and women-owned business concerns are fully considered;

(16) Advising potential sources how they can obtain information about competitive acquisitions;

(17) Providing small business, small disadvantaged business, and women-owned business sources information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor and others, including State agencies and trade associations; and

(18) Participating in interagency programs relating to small business, small disadvantaged business, and labor surplus area matters as authorized by the OSDBU director.

Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.

619.402-70 DOS designee.

Where the FAR requires action by a Small Business Administration procurement center representative, but one has not been assigned to the DOS contracting activity, the OSDBU director shall perform the action so required.

Subpart 619.5—Set-Asides for Small Business

619.505 Rejecting set-aside recommendations.

The Procurement Executive is the agency head for the purposes of FAR 19.505.

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.

619.602-1 Referral.

The contracting officer shall transmit to the OSDBU director concurrently with the submission to the appropriate SBA Regional Office, a copy of the documentation supporting the determination that a small business concern is not responsible, as required by FAR 19.602-1(a).

Subpart 619.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

619.705 Responsibilities of the contracting officer under the subcontracting assistance program.

619.705-3 Preparing the solicitation.

Whenever the clause at FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Program, is used in a solicitation for a negotiated acquisition, a notification also must be included in the solicitation. This notification shall advise prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range.

619.705-4 Reviewing the subcontracting plan.

OSDBU shall review subcontracting plans to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. OSDBU shall recommend to the contracting officer changes needed to subcontracting plans found to be deficient.

619.705-6 Postaward responsibilities of contracting officer.

619.705-6-70 Reporting responsibilities.

(a) The contracting officer shall forward to the OSDBU director a copy of each subcontracting plan that was incorporated into a contract or contract modification. Each contracting activity shall maintain a list of its active prime contracts that contain subcontracting plans.

(b) Contracting officers shall collect subcontracting data from contractors required to establish subcontracting plans in support of small and small disadvantaged business concerns. This data shall be collected quarterly and semiannually, using Standard Form 295, Summary Subcontracting Report, for the quarterly submissions, and Standard Form 294, Subcontracting Report for Individual Contracts, for the semiannual submissions. The head of the contracting activity shall forward these reports to the OSDBU director, not later than the 30th day of the month following the close of the reporting period.

Subpart 619.8—Contracting with the Small Business Administration (the 8(a) Program)

619.801 General.

The Procurement Executive is the agency head for the purpose of FAR 19.801(b)(2).

619.803 Selecting acquisitions for the 8(a) program.

619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (OSDBU).

OSDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, OSDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

619.870 Acquisition of technical requirements.

(a) *Offering Letter.* When a decision has been made by the OSDBU and contracting officer to process an acquisition through the SBA under the 8(a program, the contracting activity shall promptly send to the applicable SBA office a letter offering the acquisition to the SBA, with an information copy to the SDBUS. The offering letter should transmit the statement of work, purchase description, technical data package, or specifications and such other information deemed necessary by the contracting officer.

(b) The contracting officer has greater latitude in holding discussions with the concerns solicited under an 8(a) program acquisition than under a non-8(a) program acquisition. The technical evaluation must be carefully reviewed to determine if any source declared to be unacceptable is capable of being made acceptable.

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 622.6—Walsh-Healey Public Contracts Act

Sec.
622.604 Exemptions.
622.604-2 Regulatory exemptions.

Subpart 622.8—Equal Employment Opportunity

622.807 Exemptions.

Subpart 622.13—Special Disabled and Vietnam Era Veterans

622.1303 Waivers.

Subpart 622.14—Employment of the Handicapped

622.1403 Waivers.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 622.6—Walsh-Healey Public Contracts Act

622.604 Exemptions

622.604-2 Regulatory exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.604-2(c)(1).

Subpart 622.8—Equal Employment Opportunity

622.807 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.807(a)(1).

Subpart 622.13—Special Disabled and Vietnam Era Veterans

622.1303 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1303.

Subpart 622.14—Employment of the Handicapped

622.1403 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1403.

PART 623—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 623.1—Pollution Control and Clean Air and Water

Sec.
623.104 Exemptions.
623.107 Compliance responsibilities.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 623.1—Pollution Control and Clean Air and Water

623.104 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 23.104(c).

623.107 Compliance responsibilities

The Procurement Executive is the agency head's designee for the purposes of FAR 23.107.

PART 624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 624.2—Freedom of Information Act

624.202 Policy.

DOS regulations implementing the Freedom of Information Act (5 U.S.C. 552), as amended, are codified in Chapter 1, Department of State, Subchapter R, Access to Information, Part 171, Availability of information and records to the public, of Title 22 of the Code of Federal Regulations (22 CFR Part 171).

PART 625—FOREIGN ACQUISITION

Subpart 625.1—Buy American Act—Supplies

Sec.
625.102 Policy.
625.105 Evaluating offers.
625.108 Excepted articles, materials, and supplies.

Subpart 625.2—Buy American Act—Construction Materials

625.202 Policy.
625.204 Violations.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.
625.300-70 Overseas acquisitions.
625.302 Policy.
625.304 Excess and near-excess foreign currencies.

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

Subpart 625.9—Omission of the Examination of Records Clause

625.903 Conditions for omission.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Source: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 625.1—Buy American Act—Supplies

625.102 Policy.

The authority to make the determination prescribed in FAR 25.102(a)(3) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The authority to make the determination prescribed in FAR 25.102(b) is reserved to the Procurement Executive.

625.105 Evaluating offers.

The authority to make the determinations prescribed in FAR 25.105 is delegated, without power of redelegation, to the head of the contracting activity.

625.108 Excepted articles, materials, and supplies.

The Office of the Procurement Executive is the DOS central agency control point for furnishing to the appropriate FAR Council the documentation prescribed in FAR 15.108(b) and (c).

Subpart 625.2—Buy American Act—Construction Materials

625.202 Policy.

The authority to make the determination prescribed in FAR 25.202(a)(2) is delegated, without power of redelegation, to the head of the contracting activity. The authority to make the determination prescribed in FAR 25.202(b) is reserved to the Procurement Executive.

625.204 Violations.

The Procurement Executive is the agency head for the purposes of FAR 25.204.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.

625.300-70 Overseas acquisitions.

This program applies to acquisitions of supplies and services for use outside the United States regardless of the contractor's location.

625.302 Policy.

The authority to make the determination prescribed in FAR 25.302(b)(3) is delegated, without power of redelegation, to the head of the contracting activity. The authority prescribed in FAR 25.302(c) is delegated, without power of redelegation, to the head of the contracting activity.

625.304 Excess and near-excess foreign currencies.

The authority to make the determination prescribed in FAR 25.304(c) is delegated to the head of the contracting activity.

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

The authority to approve exceptions for other contracts, as prescribed in FAR 25.703(b), is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 625.9—Omission of the Examination of Records Clause

625.903 Conditions for omission.

The Procurement Executive is the agency head for the purposes of FAR 25.903.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 628—BONDS AND INSURANCE

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 628-70—Indemnification

628.7001 DOSAR contract clause.

(a) Contractors should not ordinarily be required to assume risks which a private buyer would guard against through insurance. There may be occasions, however, when a contractor's assumption of such risks is in the best interest of the Government. The clause in paragraph (b) below is authorized for use on those occasions. In the determination of its use, the contracting officer should weigh the advantages it provides against the likelihood of a resultant increase in the contract price.

(b) The contracting officer shall insert the clause at 652.228-70, Indemnification, in solicitations and contracts when it is determined that the contractor's assumption of risk is in the best interest of the Government.

PART 629—TAXES

Subpart 629.1—General

Sec.
629.101 Resolving tax problems.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.
629.202-70 Exemption from other Federal taxes.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.
629.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.
629.401-70 DOSAR contract clause.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 629.1—General

629.101 Resolving tax problems.

In certain instances, acquisitions by posts are exempt from various taxes in foreign countries. Contracting officers shall ascertain such exemptions and take maximum advantage of them.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.

629.202-70 Exemptions from other Federal taxes.

Taxable articles purchased for presentation abroad as gifts to foreign dignitaries and taxable articles purchased for presentation as gifts to foreign dignitaries visiting in the United States but which are to be taken out of the United States may be exempt from retail taxes or manufacturers excise taxes, in accordance with the letter of October 18, 1963, from the Chief, Excise Tax Branch, Internal Revenue Service.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.

The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.302(a).

629.303 Application of State and local taxes to Government contractors and subcontractors.

The authority to make the determination prescribed in FAR 29.303(a) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.303(c).

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.

629.401-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.229-71, Excise Tax Exemption Statement for Contractors Within the United States, in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

PART 630—COST ACCOUNTING STANDARDS

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 630.3—CAS Program Requirements

630.201-5 Waiver.

The Procurement Executive is the agency head's designee for the purposes of FAR 30.201-5(c).

PART 632—CONTRACT FINANCING

Subpart 632.1—General

Sec.
632.111 Contract clauses.
632.111-70 DOSAR contract clauses.

Subpart 632.4—Advance Payments

632.402 General.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 632.1—General

632.111 Contract clauses.

632.111-70 DOSAR contract clauses.

As prescribed in FAR 32.901, the policies, procedures, and contract clause implementing Office of Management and Budget Circular A-125, Prompt Payment, do not apply to purchases made outside the United States from foreign vendors. In those instances, the contracting officer at the overseas post shall insert the clauses at 652.232-70, Invoice Requirements, in solicitations and contracts. If payments are to be made by electronic funds transfer, the contracting officer also shall insert the clause at 652.232-71, Method of Payment (Electronic Funds Transfer).

Subpart 632.4—Advance Payments

632.402 General.

The authority to make the determination prescribed in FAR 32.402(c)(1)(iii) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). For acquisitions by overseas posts, the head of the contracting activity shall obtain the concurrence of the Procurement Executive before making a determination pursuant to this section.

PART 633—PROTESTS, DISPUTES, AND APPEALS

Subpart 633.1—Protests

Sec.
633.102 General.
633.103 Protests to the agency.
633.104 Protests to GAO.
633.105 Protests to GSBCA.

Subpart 633.2—Disputes and Appeals

633.203 Applicability.
633.211 Contracting officer's decision.
633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.
633.270-1 Scope of section.
633.270-2 Designation.
633.270-3 DOS support.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 633.1—Protests

633.102 General.

All communications relative to protests filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA) shall be coordinated with the Office of the Legal Adviser.

633.103 Protests to the agency.

For protests filed with the Department and received before award, the contracting office shall obtain the advice of the Office of the Legal Adviser before making the determination prescribed in FAR 33.103(a).

633.104 Protests to GAO.

The following procedures implement the corresponding paragraphs of FAR 33.104.

(a) *General.* (1) Upon being telephonically advised by the GAO of the receipt of a protest, before or after award, the Office of the Legal Adviser shall inform the appropriate head of the contracting activity (see 601.603-70), who shall immediately notify the contracting officer. For protests concerning ADP acquisitions, the Office of the Legal Adviser shall also inform the Deputy Assistant Secretary for Information Systems. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of the Legal Adviser shall promptly provide the same to the head of the contracting activity involved, who shall promptly provide a copy to the contracting officer and request a written report in conformance with FAR 33.104(a)(2).

(2) In addition to the requirements in FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated, shall cite the GAO file number, and shall be prepared and signed by the contracting officer. The contracting officer shall prepare the report with the assistance of the Office of the Legal Adviser. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, the report shall include an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The head of the contracting activity shall submit to the Office of the Legal Adviser an original and two complete copies of the contracting officer's report. The contracting officer shall provide one complete copy to each interested party who responded to GAO, to the contracting officer, or to the Office of the Legal Adviser pursuant to the notification prescribed in paragraph (a)(3) below. In submitting the report to GAO, the Office of the Legal Adviser shall identify all parties to whom the report has been furnished.

(3) As prescribed in FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor if the protest is after award involved in or affected by the protest that a protest has been filed with the GAO and the basis for the protest. The contracting officer shall place a written record of such notifications in the contract file. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to the GAO. The contracting officer shal send copies of such cover letters concurrently to the Office of the Lega Adviser. Cover letters shall contain a specified period of time for submissio of comments, in accordance with FAR 33.104(a)(3), and include instruction that any comments submitted to the GAO should also be submitted simultaneously to the contracting office and the Office of the Legal Adviser Materials submitted by the proteste may be withheld from interested parties in accordance with 4 CFR 21.3(b)

(4) All DOS personnel shall handl protests on a priority basis. If the specific circumstances of the protest require a longer period than allowe under FAR 33.104(a)(3), the head o the contracting activity shall immediately notify the Office of the Lega Adviser, which shall prepare a writte request for extension of the period i accordance with 4 CFR 21.3(d). Th head of the contracting activity shal deliver the protest report to the Offic of the Legal Adviser within 15 wor days from the date of telephonic notification by the Office of the Legal Adviser. For reports involving use of th 10 work day express option provide

at FAR 33.104(a)(4), the Office of the Legal Adviser shall establish the report delivery date after consultation with the head of the contracting activity.

(b) *Protests before award.* If a protest before award has been filed with GAO and the contracting officer determines in writing that it is necessary to make award under the circumstances prescribed in FAR 33.104(b)(1), the contracting officer shall first obtain advice from the Office of the legal Adviser. The contracting officer shall submit the written determination to the head of the contracting activity for approval.

(f) *Notice to GAO.* The authority to submit the report prescribed in FAR 33.104-(f) is delegated, without power of redelegation, to the head of the contracting activity. The report shall be submitted to the Comptroller General through the Office of the Legal Adviser.

633.105 Protests to GSBCA.

The following procedures implement FAR 33.105.

(a) Upon receipt of a copy of a protest to GSBCA, the contracting officer or the official designated in the solicitation shall immediately notify the Office of the Legal Adviser and the Deputy Assistant Secretary for Information Systems. The contracting officer is responsible for compliance with the requirements in FAR 33.105(a)(2). The contracting officer shall include in the contract file a record of such notifications to all parties and related correspondence with GSBCA. The contracting officer shall provide to the Office of the Legal Adviser a copy of the list of interested parties notified, simultaneously with submission of the list to the GSBCA.

(b) The contracting officer shall submit to the Office of the Legal Adviser an original and two copies of the protest file, documented in conformance with FAR 33.105(b), within 8 work days after the filing of a protest. The contracting officer also shall provide a complete copy of the file to the protester and all other interested parties within 10 work days after filing of the protest. The protest file shall be organized to comply with the requirements of Rule 4(b) of the GSBCA Rules of Procedure (48 CFR Ch. 61). The Office of the Legal Adviser shall then submit the file to the GSBCA within 10 work days after filing of the protest.

(c) The Office of the Legal Adviser shall represent the contracting officer at any hearing on suspension of the agency's delegation of procurement authority or at any hearing on the merits of the protest. The Office of the Legal Adviser shall notify the contracting officer and the Deputy Assistant Secretary for Information Systems of the results of any hearing.

(d) The authority to execute the determination and findings (D&F) prescribed in FAR 33.105-(d)(2) is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 633.2—Disputes and Appeals

633.203 Applicability.

The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

633.211 Contracting officer's decision.

(a) In the second sentence of FAR 33.211(a)(4)(v), contracting officers shall replace "the Board of Contract Appeals" with "Armed Services Board of Contract Appeals, Skyline 6, 5109 Leesburg Pike, Falls Church, VA 22041."

(b) Prior to issuing a contracting officer's final decision, the contracting officer shall obtain assistance, as appropriate, from the Office of the Legal Adviser.

633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.

633.270-1 Scope of section.

This section concerns disputes relating to DOS contracts and the transfer of certain appellate and review functions from the Department of State to the Armed Services Board of Contract Appeals.

633.270-2 Designation.

The Armed Services Board of Contract Appeals (ASBCA) is the authorized representative of the Secretary of State and the Procurement Executive for the purposes of hearing and resolving disputes relating to DOS contracts subject to the Contract Disputes Act of 1978. The ASBCA shall hear and determine appeals by contractors from contracting officers' final decisions on disputed issues relating to DOS contracts subject to the Contract Disputes Act of 1978.

633.270-3 DOS support.

The Procurement Executive shall ensure the support of all DOS personnel in processing appeals before the ASBCA. The Procurement Executive is authorized to require such DOS officers and employees to cooperate for this purpose.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEM ACQUISITION

Sec.
634.001 Definitions.
634.001-70 Supplemental definitions.
634.002 Policy.
634.003 Responsibilities.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C 486(c), 48 CFR Subpart 1.3.

SOURCE: 53 FR 26175, July 11, 1988, unless otherwise noted.

634.001 Definitions.

"Major system":

(a) The definition of "major system" in OMB Circular No. A-109, Major System Acquisitions (A-109), provides no exclusions; however, FAR 34.001 excludes from the definition of "major system" construction or other improvements to real property. Acquisition of capital project systems by the Office of Foreign Buildings, which would otherwise be subject to the requirements of A-109 are thus exempted from these requirements. Under separate authority, the DOS has other existing controls that provide the necessary review, approval, and monitoring procedures to manage capital project systems acquisitions by the Office of Foreign Buildings.

(b) Pursuant to A-109 and paragraph (b) of the definition of "major system" prescribed in FAR 34.001, any DOS system shall be considered a major system if total acquisition costs with private industry are expected to equal or exceed $10,000,000.

(c) The acquisition executive is the agency head for the purposes of paragraph (c) of the definition of "major system" prescribed in FAR 34.001. The acquisition executive is authorized to designate as a major system acquisition any DOS system not expected to meet or exceed the $10,000,000 threshold identified in paragraph (b) above; provided, that the determination shall be made in accordance with the requirements of A-109, FAR Part 34, and this Part 634.

(d) Classification as a major system acquisition is independent of the number of component DOS contracting activities involved in the process. A major system acquisition may occur entirely within the jurisdiction of a single contracting activity or it may involve more than one DOS contracting activity.

(e) Each major system acquisition shall be in response to a need of one of the DOS major missions, which are identified in volume 1 of the Foreign Affairs Manual System.

634.001-70 Supplemental definitions.

Section five of A-109 defines several terms in addition to those defined in FAR 34.001.

[53 FR 26175, July 11, 1988; 53 FR 36462, Sept. 20, 1988]

634.002 Policy.

The objective of A-109 is to assure effectiveness and efficiency in acquiring major systems. Section six of A-109 provides general policy guidelines in addition to those prescribed in FAR 34.002.

634.003 Responsibilities.

(a) The Procurement Executive is the agency head for the purposes of FAR 34.003(a).

(b) The Deputy Assistant Secretary for Operations is the agency head for the purposes of FAR 34.003(c) and the acquisition executive for the purposes of A-109.

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 636.1—General

Sec.
636.101 Applicability.
636.101-70 Exception.

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

Sec.
Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26175, July 11, 1988, unless otherwise noted.

Subpart 636.1—General

636.101 Applicability.

636.101-70 Exception.

Contracts for overseas construction, including capital improvements, alterations, and major repairs, are excepted from the provisions of the FAR (48 CFR Ch. 1) under the authority of the Foreign Service Buildings Act, 1926, as amended, 22 U.S.C. 292 et seq., as further codified at section 474 of Title 40, Public Buildings, Property, and Works, of the U.S. Code.

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

The Procurement Executive is the head of the agency for the purposes of FAR 36.209.

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

The Procurement Executive is the head of the agency for the purposes of FAR 36.602.

PART 637—SERVICE CONTRACTING

Subpart 637.1—Service Contracts—General

Sec.
637.103 Contracting officer responsibility.
637.104 Personal services contracts.
637.104-70 DOS personal services contracts.

Subpart 637.2—Consulting Services

637.204 Policy.
637.204-70 Supplemental policy.

Sec.
637.270 DOSAR contract clause.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 637.1—Service Contracts—General

637.103 Contracting officer responsibility.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.103(a)(2).

637.104 Personal services contracts.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.104(e).

637.104-70 DOS personal services contracts.

Pursuant to FAR 37.104(b), DOS statutory authorities for personal services contracts are—

(a) For the Department, section 2(c) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669);

(b) For the Bureau for Refugee Programs, section 5(a)(6) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2605);

(c) For the Bureau for International Narcotics Matters, section 636(a)(3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396);

(d) For the Foreign Service Institute, section 704(a)(4) of the Foreign Service Act of 1980, as amended (22 U.S.C. 4024);

(e) For the Office of Foreign Missions, section 208(d) of Title II—Authorities Relating to the Regulation of Foreign Missions, of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308);

(f) For the Office of Foreign Buildings, section 5 of the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 296);

(g) For the U.S. Mission to the United Nations, section 7 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e); and

(h) For the Bureau of International Organization Affairs, the separate State Department appropriations acts.

Subpart 637.2—Consulting Services

637.204 Policy.

637.204-70 Supplemental policy.

In addition to the policy prescribed in FAR 37.204(c), consulting services will normally be obtained on an intermittent or temporary basis; repeated or extended contracts are not to be effected except under extraordinary circumstances and with the prior approval of the head of the contracting activity (see 601 603-70). Also, grants and cooperative agreements may not be used as legal instruments for consulting services arrangements.

637.270 DOSAR contract clause.

The contracting officer shall include the clause at 652.237-70, Reports (Consulting Services), in solicitations and contracts for consulting services that require submission of written reports.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION

Subpart 642.2—Assignment of Contract Administration

Sec.

642.270 Contracting Officer's Representative (COR)
642.271 DOSAR contract clause.

Subpart 642.6—Corporate Administrative Contracting Officer

642.602 Assignment and location.

Subpart 642.14—Traffic and Transportation Management

642.1406-2 Contract clause.
642.1406-2-70 DOSAR contract clauses.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Source: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 642.2—Assignment of Contract Administration

642.270 Contracting Officer's Representative (COR).

(a) Contracting officers may designate technically qualified personnel as their authorized representatives to assist in the administration of contracts. The COR must be a U.S. Government employee. The contracting officer shall designate the COR in writing; the designation shall define the scope and limitations of the COR's authority. The contracting officer shall provide a copy of the COR's designation to the contractor and, as necessary, copies to the requirements and payments offices. The COR does not have the authority to make any commitments or changes that will affect the price, quality, quantity, or delivery terms of a contract; in order to do so, or to otherwise commit or bind the Government, a valid contracting officer warrant is required.

(b) Contracting officers also may designate technically qualified personnel as their authorized representatives to assist in the administration of small purchases and other simplified purchase procedures. The authorities delegated under such designations shall not exceed those provided in paragraph (a) above.

642.271 DOSAR contract clause.

The contracting officer shall insert the clause at 652.242-70, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

Subpart 642.6—Corporate Administration Contracting Officer

642.602 Assignment and location.

The Procurement Executive is the agency head's designee for the purposes of FAR 42.602(a).

Subpart 642.14—Traffic and Transportation Management

642.1406-2 Contract clause.

642.1406-2-70 DOSAR contract clauses.

(a) The contracting officer shall insert the clause at 652.242-71, Notice of Shipment, in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

(b) The contracting officer shall insert the clause at 652.242-72, Shipping Instructions, in solicitations and contracts with a source in the United States and overseas shipment of supplies is required.

PART 643—CONTRACT MODIFICATIONS

Subpart 643.1—General

Sec.

643.102 Policy.
643.102-70 Contract compliance and review.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 643.1—General

643.102 Policy.

643.102-70 Contract compliance and review.

(a) When applicable, the contracting officer shall ensure the proposed contract modification complies with the competition requirements of FAR Part 6 and DOSAR Part 606.

(b) Subpart 604.70 prescribes the review requirements for modifying contracts for supplies and services, including construction. The contracting officer shall submit such contract modifications to the Office of Procurement Executive when the modification itself exceeds $100,000, when the modification will cause the contract to exceed $100,000, or when any proposed change under the modification results in an increase or decrease exceeding $100,000 in any of the individual cost elements of the existing contract.

PART 645—GOVERNMENT PROPERTY

Subpart 645.3—Providing Government Property to Contractors

Sec.
645.302 Providing facilities.
645.302-1 Policy.

Subpart 645.6—Reporting, Redistribution and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.
645.608-6 Waiver of screening requirements.
645.610 Sale of surplus contractor inventory.
645.610-2 Exemptions from sale by GSA.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26177, July 11, 1988, unless otherwise noted.

Subpart 645.3—Providing Government Property to Contractors

645.302 Providing facilities.

645.302-1 Policy.

The authority to make the determination prescribed in FAR 45.302-1(a)(4) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70).

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.

645.608-6 Waiver of screening requirements.

The Procurement Executive is the agency head's designee for the purposes of FAR 45.608-6.

645.610 Sale of surplus contractor inventory.

645.610-2 Exemptions from sale by GSA.

The Procurement Executive is the agency head for the purposes of FAR 45.610-2(a).

PART 646—QUALITY ASSURANCE

Subpart 646.7—Warranties

Sec.
646.710 Contract clauses.
646.710-70 DOSAR contract clause.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26177, July 11, 1988, unless otherwise noted

Subpart 646.7—Warranties

646.710 Contract clauses.

646.710-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.246-70, Commercial Warranty, in solicitations and contracts for commercial supplies or services awarded and performed outside the United States.

PART 648—VALUE ENGINEERING

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

SOURCE: 53 FR 26177, July 11, 1988, unless otherwise noted.

Subpart 648.1—Policies and Procedures

648.102 **Policies.**

The Procurement Executive is the agency head for the purposes of FAR 48.102(a). The Procurement Executive is the agency head's designee for the purposes of FAR 48.102(e). The authority to extend the sharing base to include the entire contracting activity or any part of it, as prescribed in FAR 45.102(e), is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70).

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
652.000 Scope of part.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.
652.100-70 Policy.
652.102 Incorporating provisions and clauses.
652.102-1 Incorporation by reference.

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.
652.202-70 Definitions.
652.204-70 Security Requirements.
652.204-71 Security Requirements—Personnel.
652.214-70 Language Version.
652.214-71 Notices.
652.214-72 Authorization to Perform.
652.216-70 Ordering—Indefinite-Delivery Contract.
652.228-70 Indemnification.
652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.
652.232-70 Invoice Requirements.
652.232-71 Method of Payment (Electronic Funds Transfer).
652.237-70 Reports (Consulting Services).
652.242-70 Contracting Officer's Representative (COR).
652.242-71 Notice of Shipments.
652.242-72 Shipping Instructions.
652.246-70 Commercial Warranty.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26177, July 11, 1988, unless otherwise noted.

652.000 Scope of part.

This part sets forth solicitation provisions and contract clauses, in addition to those prescribed in FAR Part 52, for use in DOS acquisitions.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.

652.100-70 Policy.

(a) The solicitation provisions and contract clauses in FAR Subpart 52.2 or this Subpart 652.2 shall be used as prescribed therein, except when the use of any provision or clause is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the provision or clause were to be included.

(b) The contracting officer shall justify the exclusion of any provisions or clauses in accordance with FAR Subpart 1.4 and 601.470.

652.102 Incorporating provisions and clauses.

652.102-1 Incorporation by reference.

The Procurement Executive is the agency head for the purposes of FAR 52.102-1(a)(2)(ii).

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.

This subpart sets forth the text of all DOSAR provisions and clauses, and for each provision and clause provides a cross-reference to the location in the DOSAR that prescribes its use.

652.202-70 Definitions.

As prescribed in 602.201-70, insert the following clause in solicitations and contracts if the contract will be performed outside the United States.

DEFINITIONS (JULY 1988)

"American Embassy" and "Embassy" means the diplomatic or consular mission of the United States of America for which all supplies or services are provided under the contract.

"Department" means the Department of State, including all of its activities wherever located.

"Government" means the Government of the United States of America, unless specifically stated otherwise.

(End of clause)

[53 FR 26177, July 11, 1988; 53 FR 36462, Sept. 20, 1988]

652.204-70 Security Requirements.

As prescribed in 604.404-70, insert the following clause in solicitations and contracts performed outside the United States to the extent the contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or administratively controlled information ("Limited Official Use"). Contractors or contract employees that are not U.S. citizens shall not have access to classified or administratively controlled information.

SECURITY REQUIREMENTS (JULY 1988)

(a) This clause applies to the extent that this contract involves information the Government has determined to be classified ("Confidential," "Secret," or "Top Secret," hereinafter referred to as "classified") or administratively controlled ("Limited Official Use," hereinafter referred to as "administratively controlled").

(b) The Contractor (1) shall be responsible for safeguarding all classified or administratively controlled information in accordance with paragraph (d) below and shall not supply, disclose, or otherwise permit any unauthorized person access to classified or administratively controlled information; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information, except with the prior written authorization of the Contracting Officer, Post Security Officer, or Regional Security Officer; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified or administratively controlled information except with the prior written authorization of the Contracting Officer.

(c) The Contractor shall not permit any non-U.S. citizen access to classified or administratively controlled information. The Contractor shall not permit any individual access to classified information without the prior written authorization of the Contracting Officer, Post Security Officer, or Regional Security Officer.

(d) The Contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storage, and destroying official materials in accordance with the Uniform Regulations (Foreign Affairs Manual, Volume 5, Chapter 900, "Policy and Procedural Security"). The Contracting Officer, Post Security Officer, or Regional Security Officer shall provide a copy of this document to the Contractor. The Contracting Officer shall provide any supplements to these regulations to the Contractor in writing.

(e) The Contractor agrees to submit immediately to the Contracting Officer, Post Security Officer, a complete detailed report, appropriately classified, of any information which the Contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

(f) The Government agrees that when necessary it shall indicate by security classification or administratively controlled designation the degree of importance to the national security of information to be furnished by the Contractor to the Government or by the Government to the Contractor. The Government shall give written notice to the Contractor of such security classification or administratively controlled designation and of any subsequent changes thereof. The Contractor shall rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(g) The Contractor agrees to certify after completion of this contract that it has surrendered or disposed of all classified or administratively controlled information in its custody in accordance with applicable security regulations or instructions.

(End of clause)

652.204-71 Security Requirements—Personnel.

As prescribed in 604.404-70, insert the following clause in solicitations and contracts performed outside the United States.

SECURITY REQUIREMENTS—PERSONNEL (JULY 1988)

The Contractor agrees, if directed by the Contracting Officer, to furnish the Government with the name, date and place of birth, current address, and such other biographical information as is readily available to the Contractor, concerning any individual before permitting said individual to perform under this contract. The Contractor further agrees to permit only those individuals approved by the Government to be used in the performance of this contract.

(End of clause)

652.214-70 Language Version.

As prescribed in 614.201-7-70(a), insert the following clause in solicitations and contracts effected and performed outside the United States, except when the Procurement Executive has approved a waiver of this clause.

LANGUAGE VERSION (JULY 1988)

The English language version of this contract is the official version and binding on both parties.

(End of clause)

652.214-71 Notices.

As prescribed in 614.201-7-70(b), insert the following clause in solicitations and contracts entered into and performed outside the United States.

NOTICES (JULY 1988)

Any notice or request relating to this contract given by either party to the other shall be in writing. Said notice or request shall be mailed or delivered by hand to the other party at the address provided in the schedule of the contract. All modifications to the contract must be made in writing by the Contracting Officer.

(End of clause)

652.214-72 Authorization to Perform.

As prescribed in 614.201-7-70(c), insert the following clause in solicitations and contracts performed outside the United States.

AUTHORIZATION TO PERFORM (JULY 1988)

The Contractor warrants that (a) it has obtained authorization to operate and do business in the country or countries in which this contract will be performed; (b) it has obtained all necessary licenses and permits required to perform this contract; and (c) it shall comply fully with all laws, decrees, labor standards and regulations of said country or countries during the performance of this contract.

(End of clause)

652.216-70 Ordering—Indefinite-Delivery Contract.

As prescribed in 616.505-70, insert the following clause in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

ORDERING—INDEFINITE-DELIVERY CONTRACT (JULY 1988)

The Government shall use one of the following forms to issue orders under this contract:

(a) Optional Form (OF) 347, Order for Supplies or Services;

(b) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher; or

(c) Department of State Form (DST) 1089, Order—Supplies or Services.

(End of clause)

652.228-70 Indemnification.

As prescribed in 628.7001(b), insert the following clause in solicitations and contracts when the contractor's assumption of risk is in the best interest of the Government.

INDEMNIFICATION (JULY 1988)

The Contractor expressly agrees to indemnify and to save the Government, its officers, agents, servants, and employees harmless from and against any claim, loss, damages, injury, and liability, however caused, resulting from or arising out of the Contractor's fault or negligence in connection with the performance of work under this contract. Further, any negligence or alleged negligence of the Government, its officers, agents, servants, or employees, shall not bar a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, or employees is the sole competent, and producing cause of such claim, loss, damages, injury, or liability.

(End of clause)

652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.

As prescribed in 629.401-70, insert the following clause in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

EXCISE TAX EMEMPTION STATEMENT FOR CONTRACTORS WITHIN THE UNITED STATES (JULY 1988)

This is to certify that the item(s) covered by this contract is/are for export solely for the use of the U.S. Foreign Service Post identified in the contract schedule.

The Contractor shall use a photocopy of this contract as evidence of intent to export. Final proof of exportation may be obtained from the agent handling the shipment. Such proof shall be accepted in lieu of payment of excise tax.

(End of clause)

652.232-70 Invoice Requirements.

As prescribed in 632.111-70, insert the following clause in solicitations and contracts awarded to foreign vendors.

INVOICE REQUIREMENTS (JULY 1988)

(a) The Contractor shall submit its invoices to the Government official responsible for inspection and acceptance of the property or services. A proper invoice must include the following information:

(1) Contractor's name and mailing address (for payments by checks) or Contractor's name and bank account information (for payments by wire transfers);

(2) Invoice date;

(3) Contract number or other authorization for property delivered or services performed (including order number and contract line number);

(4) Description, quantity, unit of measure, unit price, and extended price of property delivered or services performed;

(5) Shipping and payment terms, e.g., shipment number and date of shipment, payment discount terms. Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading;

(6) Name, signature, title, and telephone number of the Contractor's officer certifying the invoice;

(7) Name and address of the Contractor's officer to whom payment is to be sent (must be the same as that in the contract or on a proper notice of assignment);

(8) Name (where practicable), title, telephone number, and mailing address of the person to be notified in the event of a defective invoice; and

(9) Any other information or documentation required by the contract (such as evidence of shipment).

(b) If an invoice does not comply with the above requirements, the Government official receiving the invoice pursuant to paragraph (a) of this clause shall notify the Contractor of the defect(s). After correcting the defect(s), the Contractor must then resubmit the invoice.

(End of clause)

652.232-71 Method of Payment (Electronic Funds Transfer).

As prescribed in 632.111-70, insert the following clause in solicitations and contracts effected outside the United States from foreign vendors when payments are to be made by electronic funds transfer.

METHOD OF PAYMENT (ELECTRONIC FUNDS TRANSFER) (JULY 1988)

(a) The Government shall make payments under this contract by electronic funds transfer through the Treasury Financial Communications System (TFCS) or the Automated Clearing House (ACH), at the option of the Government. After award, but no later than 14 days before an invoice or contract financing request is submitted, the Contractor shall designate a financial institution for receipt of electronic funds transfer payments. The Contractor shall submit this designation to the Contracting Officer or designee.

(b) For payment through TFCS, the Contractor shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the receiving financial institution receiving payment;

(2) The American Bankers Association 9-digit identifying number of the financial institution receiving payment if the institution has access to the Federal Reserve Communications system;

(3) Payee's account number at the financial institution where funds are to be transferred; and

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains electronic funds transfer messages. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(c) For payment through ACH, the Contractor shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for TFCS);

(2) Number of account to which funds are to be deposited;

(3) Type of depositor account ("C" for checking, "S" for savings);

(4) If the Contractor is a new enrollee to the ACH system, a TFS 3881, "Payment Information Form," must be completed before payment can be processed.

(d) In the event the Contractor during the performance of this contract elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official (Contracting Officer or designee) 30 days prior to the date such change is to become effective.

(e) The documents furnishing the information required in this clause must be dated and contain the signature, title, telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(f) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of clause)

652.237-70 Reports (Consulting Services).

As prescribed in 637.270, insert the following clause in solicitations and contracts for consulting services.

REPORTS (CONSULTING SERVICES) (JULY 1988)

The Contractor shall submit all reports with covers that display the following information:

(1) Name and business address of the Contractor;

(2) Contract number;

(3) Contract dollar amount (including modifications);

(4) Type of award, i.e., full and open competition or statutory authority for other than full and open competition;

(5) Name of the individual who requested the consulting services, and the name and telephone number of the requesting individual's office; and

(6) The following statement: Any report prepared by the Department of State that is substantially derived from or substantially includes the contents of this report shall cite the contract number and contractor for this report.

(End of clause)

652.242-70 Contracting Officer's Representative (COR).

As prescribed in 642.271, insert the following clause in solicitations and contracts when one or more contracting officer representatives are required.

CONTRACTING OFFICER'S REPRESENTATIVE (COR) (JULY 1988)

The Contracting Officer may designate in writing one or more Government employees, by name and position title, to take action for the Contracting Officer under this contract. Each designee shall be identified as a Contracting Officer's Representative (COR). Such designation(s) shall specify the scope and limitations of the authority so delegated; provided, that the designee shall not change the terms or conditions of the contract, unless the COR is a warranted Contracting Officer and this authority is delegated in the designation.

(End of clause)

652.242-71 Notice of Shipments.

As prescribed in 642.1406-2-70(a), insert the following clause in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

NOTICE OF SHIPMENTS (JULY 1988)

At the time of delivery of supplies to a carrier for onward transportation, the Contractor shall give notice of prepaid shipment to the consignee establishment, and to such other persons as instructed by the Contracting Officer. If the Contractor has not received such instructions by 24 hours prior to the delivery time, the Contractor shall contact the Contracting Officer and request instructions from the Contracting Officer concerning the notice of shipment to be given.

(End of clause)

652.242-72 Shipping Instructions.

As prescribed in 642.1406-2-70(b), insert the following clause in solicitations and contracts with a source in the United States and requiring overseas shipment of supplies.

SHIPPING INSTRUCTIONS (JULY 1988)

(a) Each packing box shall be of solid construction in accordance with best commercial practices and sufficiently strong in direct ratio to the weight of the contents to withstand excessively rough handling while in transit overseas. It shall be constructed of lumber that is well seasoned, reasonably sound, free from bad cross grain and from knots or knotholes that interfere with nailing or that occupy more than ⅓ of the width of the piece of lumber. Box shall be constructed with three-way corners and diagonal bracing. All nails shall be cement-coated, of correct size and properly spaced to avoid splitting or warping, and shall be driven into the grain of the wood. Dimension of lumber shall be in accordance with the following table, dependent upon the weight of the contents:

Weight of box and contents	Minimum dimensions of lumber for struts, frame members, and single diagonal braces
Up to 100 lbs	⅝" × 2¼".
101 to 250 lbs	⅞" × 2⅝".
251 to 400 lbs	⅞" × 3⅝".
401 to 600 lbs	⅞" × 4⅝" or 1" × 3⅝".

(b) Each box shall be lined with waterproof paper and shall be bound with ¾" steel straps firmly stapled in position to prevent the straps from slipping off the box. Articles must be secured and braced inside the shipping container to prevent the articles from shifting.

(c) Packing cases weighing 1,000 pounds and more must be equipped with skids. Each skid shall consist of two end sections of 2 × 6-inch lumber placed flat and a center section of 2 × 4-inch lumber placed flat and then arranged in line to provide 10-inch forklift spaces between center and end sections. When goods are ready for shipment, the Contractor shall prepare four (4) copies of a packing list, indicating the contract and, if applicable, order numbers; case number; itemized list of contents; net and gross weights in pounds and kilograms; and outside dimensions, including all clears, of each shipping container. The Contractor shall provide three (3) copies of the packing list to the U.S. Despatch Agent as specified in the contract or order. The Contractor shall place the fourth copy of the packing list in packing case number one, which shall be marked as such so that it is easily identified by the consignee. Upon receipt of the packing list, the Despatch Agent will furnish export marks and instructions regarding shipment to the port specified, depending upon steamer services available at the time.

(d) The export marks shall be stenciled on one side of each box reserved for that purpose, and the appropriate case number stenciled in the lower left-hand corner of the same side. The contract and, as necessary, order numbers, net and gross weights in pounds and kilograms shall be stenciled on the same side. (One kilogram equals 2.2046 pounds avoirdupois.) However, if the size of the box is too small to accommodate all stenciling on one side, the contract and order numbers and weights may be stenciled on the side opposite that used for the export marks and case number.

(e) The contract and, as necessary, order numbers must appear on all containers and papers relating to this clause.

(End of clause)

[53 FR 26177, July 11, 1988; 53 FR 36462, Sept. 20, 1988]

652.246-70 Commercial Warranty.

As prescribed in 646.710-70, insert the following clause in solicitations and contracts for commercial supplies or services awarded and performed outside the United States.

COMMERCIAL WARRANTY (JULY 1988)

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services. The rights and remedies provided herein are in addition to and to not limit any rights afforded to the Government by any oth clause of this contract.

(End of clause)

PART 653—FORMS

Sec.
653.000 Scope of part.

Subpart 653.1—General

653.101 Requirements for use of forms.
653.101-70 Policy.
653.107 Obtaining forms.
653.110 Continuation sheets.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.
653.213 Small purchase and other sim fied purchase procedures (SF's 18, 44, 1165, OF's 347, 348).
653.213-70 DOSAR forms (OF's 206, 20 DST 1089, OF 127).

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.
653.302 Optional forms.
653.303 Agency forms.
653.302.127 Optional Form 127, Recei and Inspection Report.
653.302.206 Optional Form 206, Purch Order, Receiving Report and Vouche
653.302.206A Optional Form 206A, chase Order, Receiving Report Voucher—Continuation Sheet.
653.303-DST-1089 Department of S Form 1089, Order—Supplies or Serv

AUTHORITY: 22 U.S.C. 2658; 40 U 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26180, July 11, 1988, un otherwise noted.

653.000 Scope of part.

This part prescribes DOSAR fo in addition to those provided in F Part 53.

Subpart 653.1—General

653.101 Requirements for use of forms

653.101-70 Policy.

The forms in FAR Subpart 53.2 o Subpart 653.2 shall be used as cribed therein, except when the us any form is prohibited by or incon ent with local laws, or the supplie services could not be obtained if form were used. The contracting officer shall justify the exclusion of any form in accordance with FAR Subpart 1.4 and 601.470.

653.110 Continuation sheets.

The provisions of FAR 53.110 also apply to forms prescribed in the DOSAR.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.

This subpart prescribes or references optional and DOS forms for use in acquisition. Consistent with FAR 53.200, this subpart is arranged by subject matter, in the same order as and keyed to the parts of the DOSAR in which the form usage requirements are addressed.

653.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

653.213-70 DOSAR forms (OF's 206, 206A, DST 1089, OF 127).

As provided in FAR 53.213(e), the following forms are approved for use in lieu of Optional Forms 347 and 348.

(a) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (see 613.505-2(a)(1)).

(b) Department of State Form (DST) 1089, Order—Supplies or Services (see 613.505-2(a)(2); also see 613.505-2(c)(2) regarding replacement of the "Terms and Conditions Applicable to Purchase Orders," which are located on the reverse of the original copy of the DST 1089).

(c) When using OF 206, contracting activities may use Optional Form 127, Receiving and Inspection Report, for that purpose (see 613.505-2(c)(1)).

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.

This subpart contains illustrations of forms prescribed in the DOSAR but not illustrated in FAR Subpart 53.3.

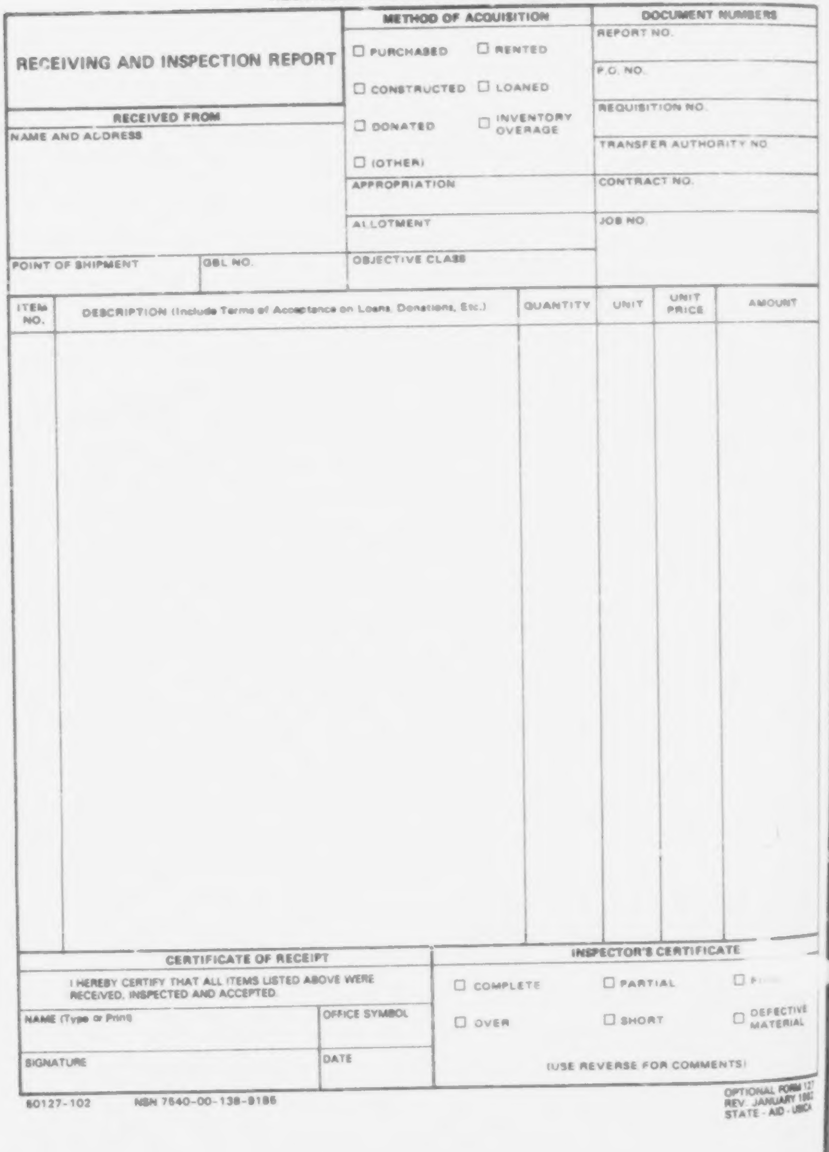
653.302 Optional forms.

This section illustrates the optional forms that are specified by the DOSAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the optional form numbers.

653.303 Agency forms.

This section illustrates the DOS forms that are specified by the DOSAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the DOS form numbers.

653.302.127 OPTIONAL FORM 127, RECEIVING AND INSPECTION REPORT



RECEIVING AND INSPECTION REPORT

METHOD OF ACQUISITION

☐ PURCHASED ☐ RENTED

☐ CONSTRUCTED ☐ LOANED

☐ DONATED ☐ INVENTORY OVERAGE

☐ (OTHER)

DOCUMENT NUMBERS

REPORT NO.

P.O. NO.

REQUISITION NO.

TRANSFER AUTHORITY NO.

CONTRACT NO.

JOB NO.

RECEIVED FROM

NAME AND ADDRESS

APPROPRIATION

ALLOTMENT

POINT OF SHIPMENT

GBL NO.

OBJECTIVE CLASS

ITEM NO.	DESCRIPTION (Include Terms of Acceptance on Loans, Donations, Etc.)	QUANTITY	UNIT	UNIT PRICE	AMOUNT

CERTIFICATE OF RECEIPT

I HEREBY CERTIFY THAT ALL ITEMS LISTED ABOVE WERE RECEIVED, INSPECTED AND ACCEPTED.

NAME (Type or Print)

OFFICE SYMBOL

SIGNATURE

DATE

INSPECTOR'S CERTIFICATE

☐ COMPLETE ☐ PARTIAL ☐

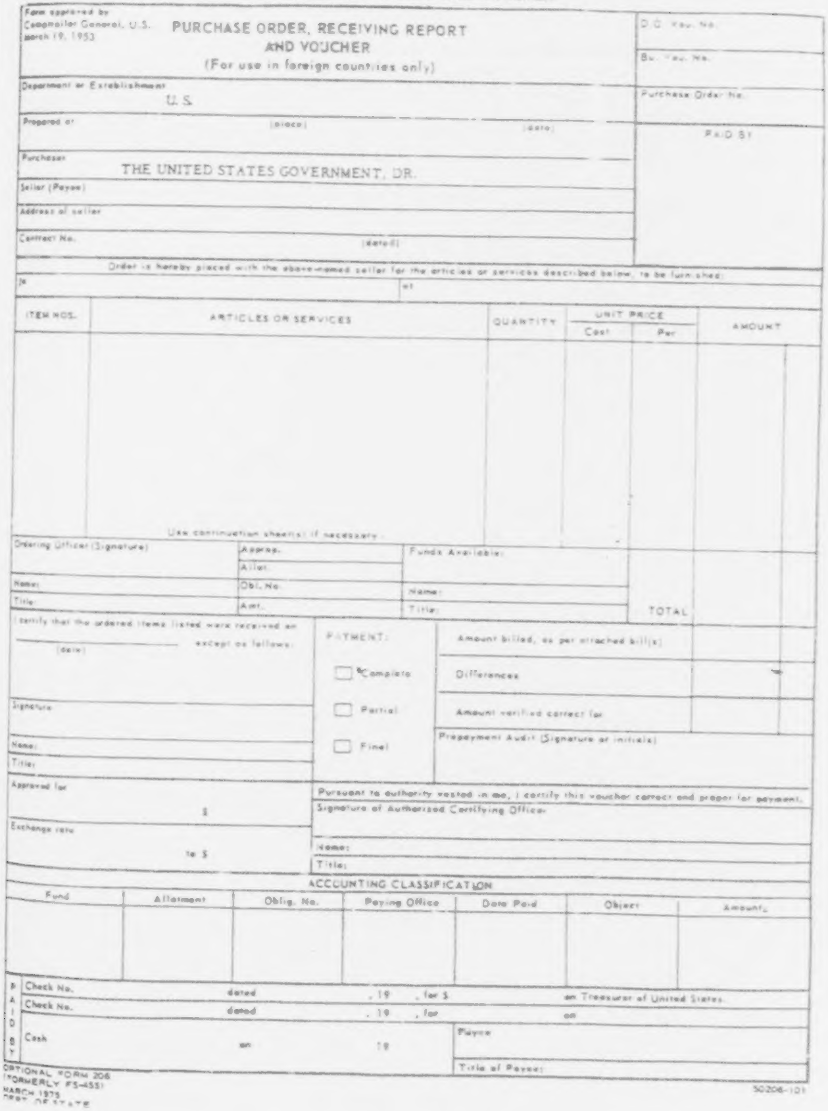
☐ OVER ☐ SHORT ☐ DEFECTIVE MATERIAL

(USE REVERSE FOR COMMENTS)

50127-102 NSN 7540-00-138-9186

OPTIONAL FORM 127
REV. JANUARY 198
STATE - AID - USI

653.302.206 OPTIONAL FORM 206, PURCHASE ORDER, RECEIVING REPORT AND VOUCHER



Form approved by
Comptroller General, U.S.
March 19, 1953

PURCHASE ORDER, RECEIVING REPORT
AND VOUCHER
(For use in foreign countries only)

D.O. Vou. No.
Bu. Vou. No.
Department or Establishment U.S.
Purchase Order No.
Prepared at (place) (date)
PAID BY
Purchaser THE UNITED STATES GOVERNMENT, DR.
Seller (Payee)
Address of seller
Contract No. (dated)

Order is hereby placed with the above-named seller for the articles or services described below, to be furnished:
To
at

ITEM NOS.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE		AMOUNT
			Cost	Per	
	Use continuation sheet(s) if necessary.				

Ordering Officer (Signature)
Approp.
Allot.
Funds Available:
Name:
Obl. No.
Name:
Title:
Amt.
Title:
TOTAL

I certify that the ordered items listed were received on (date) except as follows:
Signature
Name:
Title:

PAYMENT:
☐ Complete
☐ Partial
☐ Final

Amount billed, as per attached bill(s)
Differences
Amount verified correct for
Prepayment Audit (Signature or initials)

Approved for $
Exchange rate to $

Pursuant to authority vested in me, I certify this voucher correct and proper for payment.
Signature of Authorized Certifying Officer
Name:
Title:

ACCOUNTING CLASSIFICATION

Fund	Allotment	Oblig. No.	Paying Office	Date Paid	Object	Amount

PAID BY
Check No. dated , 19 , for $ on Treasurer of United States.
Check No. dated , 19 , for on
Cash on 19
Payee
Title of Payee:

OPTIONAL FORM 206
(FORMERLY FS-455)
MARCH 1975
DEPT. OF STATE

50206-101

IMPORTANT NOTICE TO SELLER

1. The entering office is exempt from taxes.

2. The invoices must be submitted in two copies. Carriers' invoices covering transportation and/or accessorial services shall show on the original the following certification statement, manually signed by the vendor or his authorized representative and dated: "I certify that the above bill is correct and just and that payment therefor has not been received."

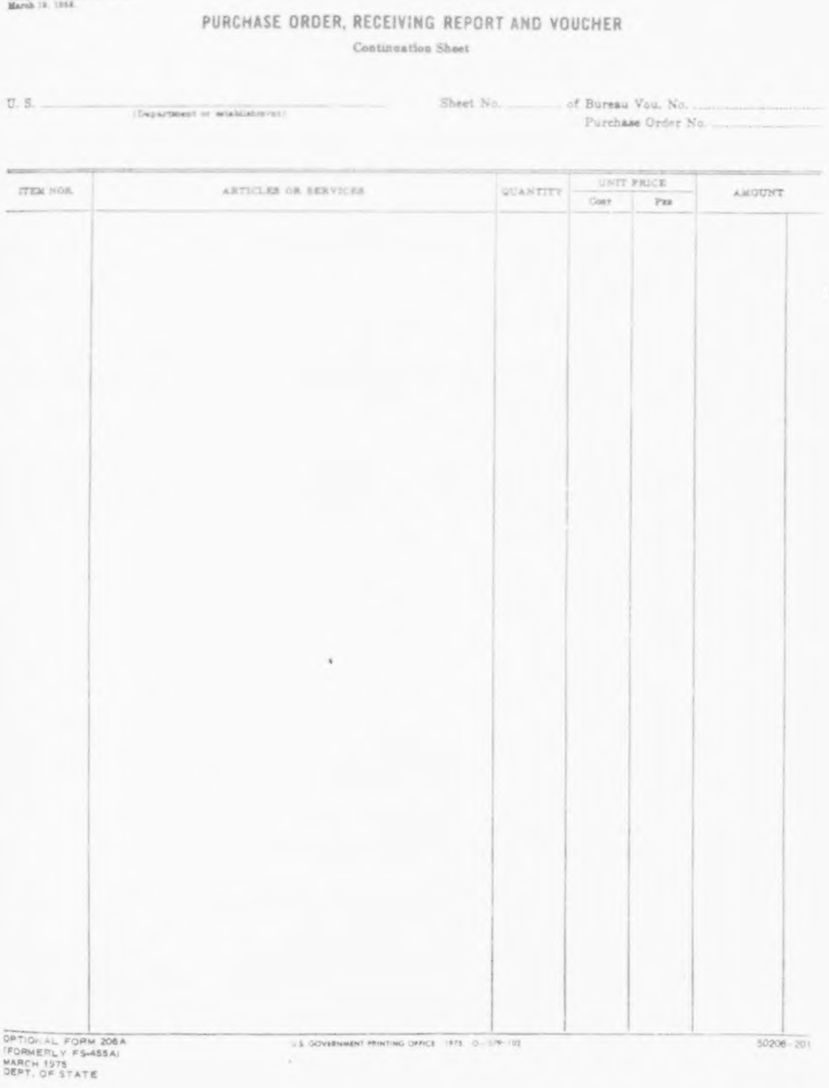
3. The order number shown in the upper right hand corner of this purchase order must be shown on your invoices.

4. All communications concerning this order must refer to order number and be addressed to the originating office.

5. Discount terms, if any, must be shown on all bills.

U.S. GOVERNMENT PRINTING OFFICE : 1975 O -

653.302.206A OPTIONAL FORM 206A, PURCHASE ORDER, RECEIVING REPORT AND VOUCHER—CONTINUATION SHEET



Form approved by
Comptroller General, U. S.
March 19, 1958.

PURCHASE ORDER, RECEIVING REPORT AND VOUCHER

Continuation Sheet

U. S. ______________________
(Department or establishment)

Sheet No. ______ of Bureau Vou. No. ______________

Purchase Order No. ______________

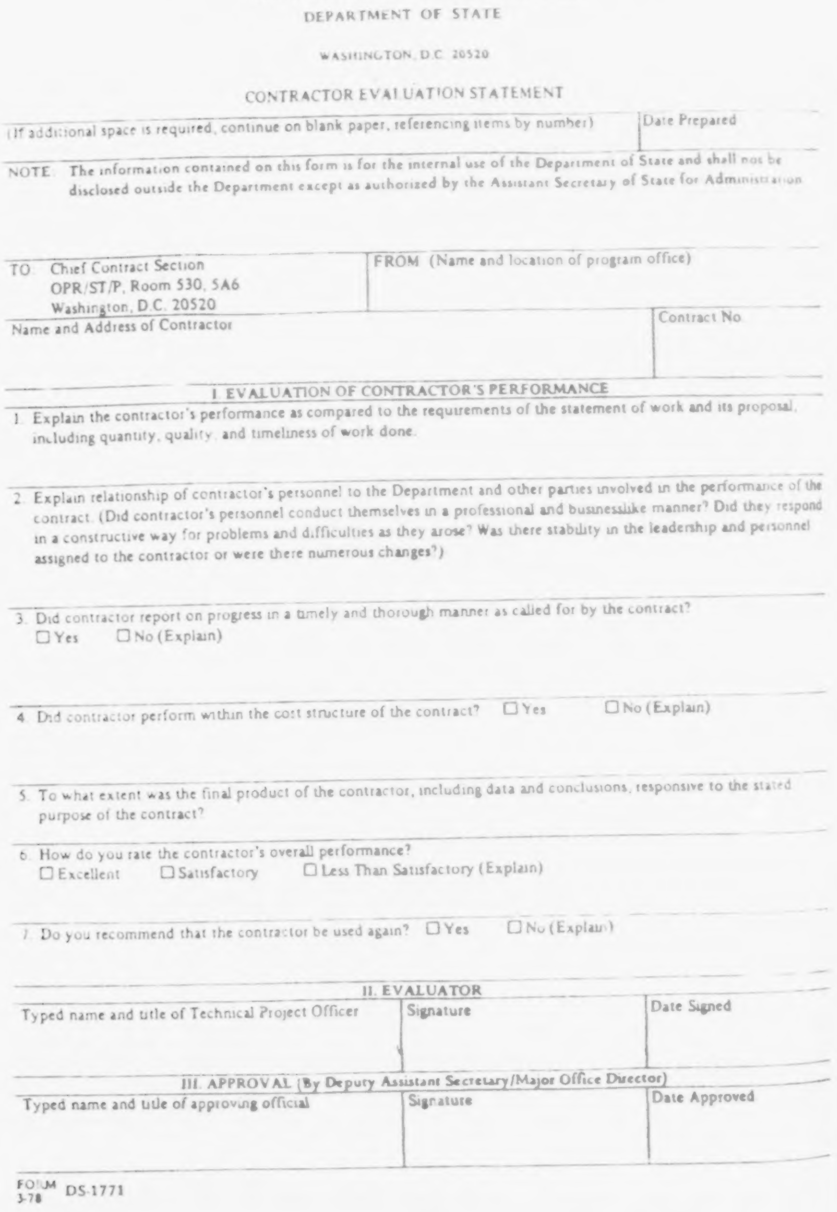
ITEM NOS.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE		AMOUNT	
			Cost	Per		

OPTIONAL FORM 206A
(FORMERLY FS-455A)
MARCH 1975
DEPT. OF STATE

U.S. GOVERNMENT PRINTING OFFICE : 1975 O—579-102

50206-201

653.303-DS-1771 DEPARTMENT OF STATE FORM (DS) 1771, CONTRACTOR EVALUATION STATEMENT



DEPARTMENT OF STATE

WASHINGTON, D.C. 20520

CONTRACTOR EVALUATION STATEMENT

(If additional space is required, continue on blank paper, referencing items by number)	Date Prepared

NOTE: The information contained on this form is for the internal use of the Department of State and shall not be disclosed outside the Department except as authorized by the Assistant Secretary of State for Administration.

TO: Chief Contract Section OPR/ST/P, Room 530, SA6 Washington, D.C. 20520	FROM (Name and location of program office)
Name and Address of Contractor	Contract No.

I. EVALUATION OF CONTRACTOR'S PERFORMANCE

1. Explain the contractor's performance as compared to the requirements of the statement of work and its proposal, including quantity, quality, and timeliness of work done.

2. Explain relationship of contractor's personnel to the Department and other parties involved in the performance of the contract. (Did contractor's personnel conduct themselves in a professional and businesslike manner? Did they respond in a constructive way for problems and difficulties as they arose? Was there stability in the leadership and personnel assigned to the contractor or were there numerous changes?)

3. Did contractor report on progress in a timely and thorough manner as called for by the contract?
☐ Yes ☐ No (Explain)

4. Did contractor perform within the cost structure of the contract? ☐ Yes ☐ No (Explain)

5. To what extent was the final product of the contractor, including data and conclusions, responsive to the stated purpose of the contract?

6. How do you rate the contractor's overall performance?
☐ Excellent ☐ Satisfactory ☐ Less Than Satisfactory (Explain)

7. Do you recommend that the contractor be used again? ☐ Yes ☐ No (Explain)

II. EVALUATOR

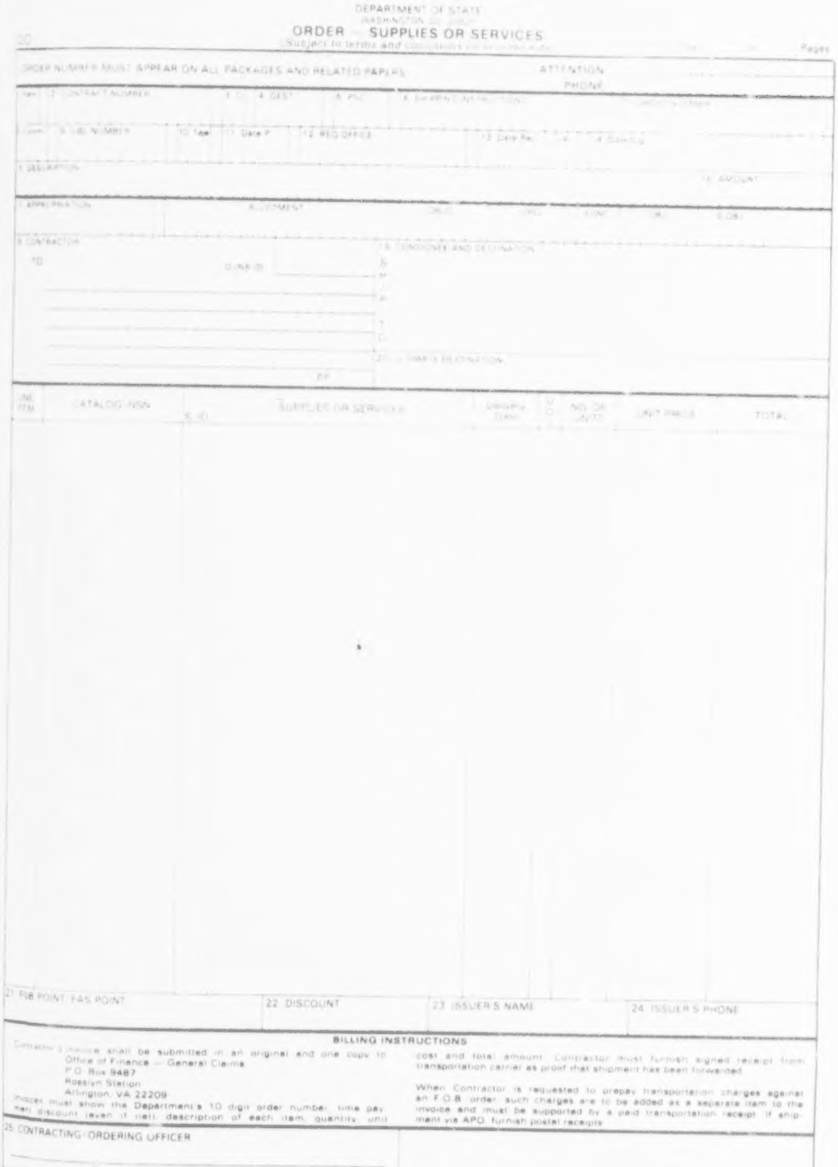
Typed name and title of Technical Project Officer	Signature	Date Signed

III. APPROVAL (By Deputy Assistant Secretary/Major Office Director)

Typed name and title of approving official	Signature	Date Approved

FORM 3-78 DS-1771

653.303-DST-1089 DEPARTMENT OF STATE FORM 1089, ORDER—SUPPLIES OR SERVICES



DEPARTMENT OF STATE
WASHINGTON, DC

ORDER — SUPPLIES OR SERVICES
(Subject to terms and conditions)

Pages

ORDER NUMBER MUST APPEAR ON ALL PACKAGES AND RELATED PAPERS

ATTENTION

PHONE

2. CONTRACT NUMBER

4. DEST

5. PSC

6. SHIPPING INSTRUCTIONS

10. Type

11. Date P

12. REQ OFFICE

13. Date Req

DESCRIPTION

AMOUNT

APPROPRIATION

ALLOTMENT

CONTRACTOR

TO

DUNS ID

CONSIGNEE AND DESTINATION

ULTIMATE DESTINATION

LINE ITEM	CATALOG NSN	SUPPLIES OR SERVICES	DELIVERY DATE	U/I	NO. OF UNITS	UNIT PRICE	TOTAL

21. FOB POINT/FAS POINT	22. DISCOUNT	23. ISSUER'S NAME	24. ISSUER'S PHONE

BILLING INSTRUCTIONS

Contractor's invoice shall be submitted in an original and one copy to:

Office of Finance — General Claims
P.O. Box 9487
Rosslyn Station
Arlington, VA 22209

Invoices must show the Department's 10 digit order number, time payment discount (even if net), description of each item, quantity, unit cost and total amount. Contractor must furnish signed receipt from transportation carrier as proof that shipment has been forwarded.

When Contractor is requested to prepay transportation charges against an F.O.B. order, such charges are to be added as a separate item to the invoice and must be supported by a paid transportation receipt. If shipment via APO, furnish postal receipts.

25. CONTRACTING/ORDERING OFFICER

Signature Date

FORM DST - 1099 4-81

ORIGINAL CONTRACTOR

TERMS AND CONDITIONS APPLICABLE TO PURCHASE ORDER

Note: If a contract number is shown, Terms and Conditions of the applicable contract shall apply to this Delivery Order which is issued pursuant thereto.

1. INSPECTION AND ACCEPTANCE - Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejection, risk of loss will be on the Contractor unless loss results from negligence of the Government.

2. VARIATION IN QUANTITY - No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

3. DISCOUNTS - (a) Time discounts will be computed from: (1) date of delivery of the supplies to carrier when delivery and acceptance are at the point of origin, (2) date of delivery at destination or port of embarkation, when delivery and acceptance are at either of those points, or (3) date a proper invoice or voucher is received in the office specified by the Government, if the latter date is later than the date of delivery. (b) Payment will be deemed to have been made on the date which appears on payment checks.

4. DISPUTES - (This contract is governed by the Contract Disputes Act of 1978 (Public Law 95-563 "the Act")). The Act provides administrative procedures for the submittal, analysis, negotiation, and if necessary, litigation of claims relating to this contract. The parties to this contract must comply with certain time restrictions on rendering of contracting officer decisions on claims, and on the appeal of those decisions. Further details on the rights and remedies under the Act may be found in the Federal Procurement Regulations at 1-1.318.4.

5. FOREIGN SUPPLIES - This contract is subject to the Buy American Act (41 U.S.C. 10 a-d) as implemented by Executive Order 10582 of December 17, 1954, and any restrictions in appropriation acts on the procurement of foreign supplies.

6. CONVICT LABOR - In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence or imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c) (2)) and Executive Order 11755, December 29, 1973.

7. OFFICIALS NOT TO BENEFIT - No member of or Delegate to Congress or resident commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. COVENANT AGAINST CONTINGENT FEES - The Contract warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fees, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contrac without liability or in its discretion to deduct from the contrac price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9. FEDERAL, STATE, AND LOCAL TAXES - Except as may be otherwise provided in this contract, the contract price includes al applicable Federal, State, and local taxes and duties in effect on the date of this contract but does not include any taxes from which the Government, the contractor or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause. For the purpose of this clause, the term "date of this contract" means the date of the contractor's quotation or, if no quotation, the date of this Purchase Order.

10. SERVICE CONTRACT ACT OF 1965, As Amended (Service contracts not exceeding $2,500) - Except to the extent that an exemption, variation, or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of $2,500, the Contractor and any sub-contractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965 expressed by 29 CFR Part 4 are hereby incorporated by reference in this contract.

11. The following terms and conditions are applicable to purchase in excess of $2,500: (a) Employment of the Handicapped - Federal Procurement Regulation, Temporary Regulation 38, dated May 26 1976. (b) Contract Work Hours and Safety Standards Act - Overtime Compensation Section - Federal Procurement Regulation 1-12.303. (c) Service Contract Act of 1965 - (Services contracts in excess of $2,500) Federal Procurement Regulation 1-12.904-1

MARKING INSTRUCTIONS

CONTAINERS OR PACKAGES shall be plainly marked to show the order number, brief description of contents, including form number, if any, quantity and vendor's name. Receiving clerk may reject any deliveries which do not bear su identification.

SHIPPING DOCUMENTS AND CORRESPONDENCE

All shipping documents and correspondence pertaining to this order (except invoices as stated below) shall be referred or forwarded to the person and organization who signed the order. Such docume MUST refer to the departments order number.

SUBCHAPTER I—DOS SUPPLEMENTATIONS

PART 670—SPECIAL CONTRACTING PROGRAMS

Subpart 670.1—International Narcotics Control Program Acquisitions

Sec.
670.101 Scope of subpart.
670.102 Policy.
670.103 Applicability.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26188, July 11, 1988, unless otherwise noted.

Subpart 670.1—International Narcotics Control Program Acquisitions

670.101 Scope of subpart.

This subpart prescribes policies for acquisitions under the International Narcotics Control (INC) Program, which is authorized by section 481 of the Foreign Assistance Act of 1961, as amended (22 U.S.C 2291).

670.102 Policy.

(a) The Procurement Executive is responsible for INC Program acquisitions. In this capacity, the Procurement Executive has the specific authority to enter into and administer INC funded contracts. Unless otherwise directed by the Secretary of State or provided in DOS regulations, the Procurement Executive shall also provide policy direction and prescribe or approve standards, procedures, and internal instructions for the award and administration of INC funded contracts, including contracts with individuals for personal services abroad.

(b) To accomplish the purposes of the INC Program, the following implementing authorities and regulations may be utilized to the extent the Procurement Executive deems necessary or appropriate in the performance of the acquisition function.

(1) The Foreign Assistance Act of 1961, as amended.

(2) Sections 1, 2, and 3 of Executive Order No. 11223 of May 12, 1965.

(3) Chapter 7 of this Title, Agency for International Development Acquisition Regulation, (48 CFR Ch. 7), including any amendments thereto.

(c) Authority to perform functions prescribed in this subpart may be redelegated.

[53 FR 26188, July 11, 1988; 53 FR 36462, Sept. 20, 1988]

670.103 Applicability.

The provisions of this subpart apply to acquisitions for the INC Program both within and outside the United States.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

Table of General Services Administration Temporary Regulations (48 CFR Chapter 5)

The following table contains temporary regulations issued by the General Services Administration (48 CFR Chapter 5) as of October 1, 1985.

GSAR AC	Subject	Expiration Date	Publication Date
84-1	Contract Distribution	11/16/84	49 FR 22094, 5/25/84
84-2	Implementation of the Department of Labor (DOL) Revised Regulations on Labor Standards for Federal Service Contracts	12/14/84	49 FR 25872, 6/25/84
84-2	Correction		49 FR 29606, 7/23/84
84-2, Suppl. 1	Extension of GSAR AC-82-2 expiration date	1/14/85	50 FR 945, 1/8/85
84-3	Purchases Under Blanket Purchase Agreements (BPA)	1/30/85	49 FR 32205, 8/13/84
84-4	Contract Clauses	2/6/85	49 FR 32360, 8/14/84
84-5	Payment by Wire Transfer and Related Clauses	3/3/85	49 FR 35638, 9/11/84
84-6	Basis of Award for Construction Contracts	3/10/85	49 FR 36505, 9/18/84
84-7	Ratification of Unauthorized Contractural Commitments	4/2/85	49 FR 40032, 10/12/84
84-8	Disputes and Appeals	4/5/85	49 FR 40576, 10/17/84
85-1	Payments Due Date; Construction Contracts	7/23/85	50 FR 4516, 1/31/85
85-1, Suppl. 1	Extension of GSAR AC-85-1 expiration date	1/23/86	50 FR 28948, 7/17/85
85-1, Suppl. 2	Extention of GSAR AC-85-1 expiration date	6/28/86	51 FR 5335, 2/13/86
85-2	Threshold for Application of Trade Agreements Act	7/25/85	50 FR 4862, 2/4/85
85-3	Restriction on Procurement of Hand and Measurement Tools	6/18/85	50 FR 18262, 4/30/85
85-3	Expiration date corrected	10/21/85	50 FR 20103, 5/14/85
85-3, Suppl. 1	Extention of GSAR AC-85-3 expiration date	4/18/85	50 FR 43395, 10/25/85
85-4	Protests to the General Accounting Office (GAO)	12/21/85	50 FR 26998, 7/1/85
AL-84-5	Interim Protest Procedures to Implement Competition in Contracting Act of 1984	6/21/85	49 FR 50726, 12/31/84
85-5	Threshold for Application of Trade Agreements Act	7/1/86	50 FR 52780, 12/27/85
86-1	Increase in Imprest Fund and Certified Invoice Thresholds	7/15/86	51FR 1814, 1/15/86
86-1, Suppl. 1	Extension of GSAR AC-86-1 expiration date	1/14/87	51 FR 25703, 7/16/86
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86-6	Status Report of Orders and Shipments	1/2/87	51 FR 25703, 7/16/86
86-6, Supp. 1	Extension of GSAR AC-86-6 expiration date	7/3/87	52 FR 1333, Jan. 13, 1987
86-7	Increase in Thresholds for Certain Requirements Relating to Small Purchases	5/3/87	51 FR 41506, Nov. 17, 1986
86-8	Threshold for Application of Trade Agreements Act	7/2/87	52 FR 58, Jan. 2, 1987
86-8, Supp. 1	Extension of GSAR AC-86-8 expiration date	1/1/88	52 FR 28829, Aug. 4, 1987
86-8, Supp. 2	Extension of GSAR AC-86-8 expiration date	2/15/88	53 FR 1925, Jan. 25, 1988
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87-1, Suppl. 1	Extension of GSAR AC-87-1 expiration date	3/8/88	52 FR 35094, Sept. 17, 1987
87-1, Suppl. 2	Comparison of Retirement Costs Under OMB Circular A-76	3/8/89	53 FR 10395, Mar. 31, 1988
87-1, Suppl. 3	Comparison of Retirement Costs Under OMB Circular A-76 (cancellation)		53 FR 36580, Sept. 21, 1988
87-2	Annual Report from Federal Contractors	10/2/87	52 FR 12182, Apr. 15, 1987
87-2, Suppl. 1	Annual Report From Federal Contractors	4/1/88	52 FR 37618, Oct. 8, 1987

GSAR AC	Subject	Expiration Date	Publication Date
87-3	Monitoring Contract Compliance with Subcontracting Plans	6/16/88	53 FR 47396, Dec. 13, 1987.
87-3, Suppl. 1	Monitoring Contractor Compliance with Subcontracting Plans.	6/16/89	53 FR 21823, June 10, 1988.
87-4	Increase in Thresholds for Contracting Office Warrant Program and Imprest Fund Transactions.	7/22/88	53 FR 132, Jan. 5, 1988
88-1	Prompt Payment and Ratification of Unauthorized Commitments.	3/8/89	53 FR 7365, Mar. 8, 1988.
88-2	Changes to Government Procurement Code	8/1/89	53 FR 28885, Aug. 1, 1988.

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